



**ADMINISTRATIVE CONFERENCE OF THE
UNITED STATES**

**FY 2016 Annual Report to Congress
on the
Notification and Federal Employee
Antidiscrimination and Retaliation
Act of 2002**

Office of the Chairman



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Introduction

The Administrative Conference of the United States (ACUS) is an independent agency that studies federal administrative procedures, with the aim of developing recommendations for procedural improvements in federal agencies and programs, to achieve greater fairness, effectiveness, or efficiency. ACUS recommendations may be addressed to the President, Congress, agencies and the Judicial Conference of the United States. The Conference was established by statute in 1964 (5 U.S.C. §§ 591-96). Although ACUS lost its funding in 1995 and ceased operations, it was revived in 2010 and continues to carry out its statutory functions.

ACUS is organized as a public-private partnership that brings together senior government officials and private citizens with diverse views and backgrounds to provide nonpartisan expert advice. The Conference is headed by a Chairman, who is selected by the President and confirmed by the Senate for a 5-year term. The only employees of ACUS are in the Office of the Chairman, which has a small professional staff numbering approximately 16 persons.

This report, which focuses on Fiscal Year (FY) 2016, also covers FY 2015. It was prepared in accordance with the requirements of Title II, Section 203, of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act). The No FEAR Act, Public Law 107-174, and regulations at 5 C.F.R. Part 724, require that federal agencies be publicly accountable for violations of antidiscrimination and whistleblower protection laws by posting both quarterly and annual statistical data relating to federal sector Equal Employment Opportunity (EEO) complaints on their public websites. Federal agencies must also notify employees and applicants for employment about their rights under the federal antidiscrimination and whistleblower laws.

ACUS is committed to fostering an inclusive work environment to better serve the agency's mission, and ACUS is committed to creating a work place where employees are valued and diversity is fully supported. This is reflected in Executive Director Matthew L. Wiener's Policy Statement on Equal Employment Opportunity, Non-Discrimination, Diversity, Harassment, and Whistleblower Protection, dated October 1, 2016, which highlights the agency's commitment to ACUS employees:

The Administrative Conference of the United States (ACUS) 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.¹

1. <https://www.acus.gov/policy/no-fear-act-notice> (Reprinted in Appendix below)



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I. Cases in Federal Court and Disposition Status

As in the earlier period since the re-establishment of ACUS in FY 2010, there have been no federal court cases filed against ACUS whatsoever during FY 2015 and FY 2016. Therefore, the number of federal court cases alleging a claim against ACUS concerning federal antidiscrimination laws or a violation of whistleblower laws is zero.

II. Amount of Money Required to be Reimbursed to the Judgment Fund

ACUS had no cases requiring reimbursements and therefore made no payments to the U.S. Department of the Treasury Judgment Fund during FY 2015 and FY 2016.

III. Formal Findings of Misconduct Resulting in Disciplinary Actions

During FY 2015 and FY 2016, ACUS did not discipline any employees for discrimination, retaliation, harassment, or an infraction of any provision of law covered by the No FEAR Act. This is consistent with the fact that there were no findings of discrimination by Final Agency Decision, order of the Equal Employment Opportunity Commission (EEOC), the Merit Systems Protection Board, the Office of Special Counsel (OSC), a federal court, or after a management inquiry.

IV. Final Year-End No Fear Act Data for Administrative Complaints During FY 2015 and FY 2016

Table 1 provides two years of administrative complaint activity. This information has been posted on the agency's external website and internal shared computer system.



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**Table 1: ACUS Complaint Activity for
FY 2015 and FY 2016**

	2015	2016
Number of ACUS Employees	15	15
Number of complaints filed	0	0
Number of complainants	0	0
Repeat filers	0	0
Complaints Filed as a Percentage of Total ACUS Workforce	0	0

V. Internal Findings of Misconduct and Resulting Disciplinary Actions

There were no findings of discrimination as a result of internal investigations and no employees were disciplined for engaging in conduct inconsistent with federal antidiscrimination or whistleblower laws during FY 2015 and FY 2016.

ACUS has EEO Guidelines and Procedures in place to address disciplinary actions for employees found to be in violation of discriminatory laws. The process is outlined in the Chairman's "Policy Statement on Equal Employment Opportunity, Non-Discrimination, Diversity, Harassment, and Whistleblower Protection" (see Appendix below) and on a poster headed "Equal Employment Opportunity is THE LAW," which is posted in a prominent location in the ACUS office suite.

VI. Trend Analysis for EEO Complaint Data

Because no formal complaints have been filed in the two years covered by this report, nor in the preceding five years since the re-establishment of the agency, the number of EEO complaints has remained constant at zero.

VII. Practical Knowledge Gained Through Experience

ACUS continually seeks to improve its processes for preventing and addressing discrimination. This includes offering training for staff and senior level management, sponsoring agency events to improve morale, and periodically reviewing the agency's EEO policies and procedures.



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VIII. Actions Taken to Improve ACUS' Equal Employment Opportunity Program

Because the chairmanship of ACUS remained vacant during FY 2015 and FY 2016, the Vice Chairman delegated authority to the Executive Director for management of the agency including personnel issues. Under this authority, the Executive Director issued a revised “Policy Statement on Equal Employment Opportunity, Non-Discrimination, Diversity, Harassment, and Whistleblower Protection” on October 1, 2016, and the agency’s “No FEAR Act Notice” published in the *Federal Register* on October 6, 2014 (79 Fed. Reg. 60126) remains in effect. The entire agency staff has periodically participated in informal conversations about the policy and its component elements at agency staff meetings and an off-site training session in December 2016.

Because ACUS is a very small agency, it has entered into a contractual arrangement with the General Services Administration (GSA) for EEO services, including, but not limited to, counseling and Alternative Dispute Resolution (ADR) services. In addition, the entire agency staff of approximately 16 persons is located in a single suite of offices in Washington, DC, and therefore all senior management officials are readily accessible to each member of the staff for informal discussion of any issues.

IX. Plan to Train Employees

In compliance with the recurring training and documentation requirements of 5 C.F.R. § 724.203(b) and (d), ACUS has created self-administered, online training materials for the required No FEAR Act training. All members of the staff were required to complete this training in January 2015. Training was conducted in person in 2016 (as noted in § VIII). Online training will resume sometime in 2017. In the meantime, all new employees have been required to take the online EEO and No FEAR Act training within 30 days of joining the staff.

X. Conclusion

ACUS is committed to creating a workplace free from discrimination and reprisal. We strive to provide employees with information regarding Equal Employment Opportunity and the No FEAR Act through appropriate on-line training, open lines of communication, and transparency in hiring and promotional opportunities.



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Appendix



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MEMORANDUM FOR ALL ACUS EMPLOYEES

October 1, 2016

FROM: Matthew L. Wiener, Executive Director

SUBJECT: Policy Statement on Equal Employment Opportunity, Non-Discrimination, Diversity, Harassment, and Whistleblower Protection; No FEAR Act Notice

Since the re-establishment of ACUS in 2010, this agency has maintained a clean record of non-discrimination, inclusiveness, and diversity in all of our activities and operations. I believe that the agency's staff has been diligent in observing and complying with the applicable laws and agency policy statements issued from time to time relating to these matters. The following information will serve as an official Policy Statement on Equal Employment Opportunity, Non-Discrimination, Diversity, Harassment, and Whistleblower Protection, as well as the annual notice required by the No FEAR Act of 2002, Pub. L. 107-174.

The Administrative Conference of the United States 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.

Every employee of ACUS is responsible for helping to ensure equal employment opportunity (EEO) and for complying with EEO laws and other federal policies to prevent discrimination, harassment, and reprisal. Each of us has a role in maintaining an environment of equal opportunity and must take personal responsibility for adhering to the principles that guarantee equal opportunity for all.

It is important that we always foster a culture of inclusion and respect at ACUS and promote an environment that embraces diversity. This agency is committed to providing and maintaining a work environment that is free from discrimination. This includes assurance of EEO for its employees and applicants without regard to race, color, religion, sex, national origin, age, physical or mental disability, sexual orientation, marital or parental status, protected genetic information, pregnancy, or political affiliation. This policy covers all persons and every facet of employment, including, but not limited to, recruitment and hiring, promotions, pay, benefits, assignments, evaluations, awards, training, career development, working conditions, discipline, and adverse actions.



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Furthermore, our policy of non-discrimination is applicable to all aspects of employee behavior with respect to the membership of the Administrative Conference, the agency's consultants and contractors, employees of other federal agencies, and all other persons with whom we may interact in the course of carrying out the mission of this agency. ACUS takes allegations of discrimination, retaliation, and harassment seriously, and staff members are directed to carry out the agency's activities with the utmost fairness, integrity, and equality of opportunity. Any concerns regarding discrimination, harassment or retaliation should be brought to the attention of the Chairman and/or senior management.

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.

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



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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. Telephone: 202-501-4571. 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.

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 Web site: www.osc.gov.

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower 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.



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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.

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 20th 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 and 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).