

**U.S. FEDERAL LABOR
RELATIONS AUTHORITY**



No FEAR Act Annual Report

Fiscal Year 2017

U.S. Federal Labor Relations Authority

**Annual Report Required by Section 203 of the
Notification and Federal Employee Antidiscrimination
and Retaliation Act of 2002 (NoFEAR Act)**

Fiscal Year 2017

Item 1. *Number of cases in Federal Court pending or resolved arising under each of the respective provisions of the Federal Antidiscrimination Laws and Whistleblower Protection Laws as defined in 5 CFR § 724.102 separated by the provision(s) of law involved:*

Total cases: **0**

Total cases broken down by provision(s) of law involved: **Not applicable.**

Item 2. *In the aggregate, for cases covered by Item 1 and separated by provisions(s) of law involved--*

(i): Status or disposition: **Not applicable.**

(ii): Amount of money required to be reimbursed to the Judgment Fund: **Not applicable.**

(iii): Amount of reimbursement to the Judgment Fund for attorney's fees where separately designated: **Not applicable.**

Item 3. *In connection with the cases covered by Item 1 and separated by the provision(s) of law involved, the total number of employees disciplined (i.e., reprimanded, suspended without pay, reduced in grade or pay, or removed) and the specific nature of the discipline taken:*

Total number of employees disciplined: **Not applicable.**

Item 4. *The final year-end data about discrimination complaints posted in accordance with section 301 of the NoFEAR Act:*

See Attach. 1.

Item 5. *The number of employees disciplined for conduct inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of these laws and the specific nature of the disciplinary actions taken:*

0

Item 6. *A detailed description of the agency's policy for taking disciplinary action against employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of these laws:*

The Federal Labor Relations Authority's (FLRA's) established policy is to prohibit employment discrimination that is based on activity and personal characteristics protected under the various Federal Antidiscrimination Laws and Whistleblower Protection Laws.

For example, FLRA Instruction 3700.1b, Equal Employment Opportunity (Attach. 2(a)), makes clear that it is the FLRA's policy to provide equal employment opportunity (EEO) for all persons, and to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, or disability. FLRA Instruction 3700.1b further states that it is the FLRA's policy to prohibit discrimination based on marital status, sexual orientation, or political affiliation. *Id.*

The FLRA's policy of prohibiting discrimination is also stated in the EEO Program Policy Statement that the then-FLRA Acting Chairman issued during FY 2017 (Attach. 2(b)), and that the FLRA distributed by e-mail to all employees, posted throughout the FLRA's workspaces, and posted on its intranet and internet sites.

In addition, the FLRA's NoFEAR Act Notice (Attach. 2(c)) – which is posted on both the FLRA's intranet and internet sites – reaffirms that the FLRA prohibits discrimination based on race, color, religion, sex, national origin, age, disability, marital status, or political affiliation. That Notice also specifies that retaliation against employees who engage in whistleblower activity is prohibited, and that conduct inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws may be subject to appropriate disciplinary action.

Further, the FLRA's Anti-Harassment Policy (Attach. 2(d)) – which the Agency distributed to all employees by e-mail during FY 2017, posted at the FLRA's workplaces, and posted on its intranet and internet sites – informs all employees that anyone who engages in workplace harassment based on protected personal characteristics may be subject to disciplinary action.

Moreover, as a general matter, it is the FLRA's established policy with respect to taking disciplinary and adverse action that an individual engaging in misconduct initially should be given notice of the problem, and informal measures – such as counseling, training and close supervision – should be employed in an effort to correct the misconduct. Where, however, informal efforts to resolve conduct problems are unsuccessful, or the misconduct is sufficiently serious, it is the FLRA's policy to impose discipline that is appropriate to the circumstances. This policy is set forth in FLRA Instruction 3752, Employee Discipline and Adverse Actions (Attach. 2(e)), which addresses discipline and adverse actions generally, and encompasses disciplinary action against employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or constitutes another prohibited personnel practice.

Item 7. An analysis of the information provided in Items 1 through 6 to include an examination of trends, causal analysis, practical knowledge gained through experience, and any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace:

During fiscal year (FY) 2017, there were no court cases involving allegations that arose under Federal Antidiscrimination Laws or Whistleblower Protection Laws. And there have been no such court cases during the previous five FYs.

In FY2017, the FLRA received 2 formal EEO complaints from the same complainant, compared to 1 in FY 2016, 0 in FY 2015, 2 in FY2014, 6 in FY2013, and 1 in FY2012.

As noted in previous years' reports, and as reflected in the FLRA's NoFEAR Act data posting (Attach. 1), there was a spike in the number of EEO complaints filed in FY2013 relative to the previous four FYs – FY 2009-2012, with the total number of complaints filed in FY2013 exceeding the total number of complaints filed in the previous four years combined. A common thread in the complaints filed in FY2013 was alleged discrimination relating to performance appraisals. This likely stems from the FLRA's transition from a pass/fail performance-management system (PMS) to a five-tier PMS. And one of the complaints filed in FY2014 alleges reprisal for filing an EEO complaint in FY2013 regarding a performance appraisal.

The FLRA implemented the five-tier PMS in FY 2012 in an effort to respond to management and employee desire for a mechanism to make meaningful distinctions in employee performance and to address poor performance, which was very difficult to do under the pass/fail system. With the implementation of the five-tier system, FLRA management has committed to actively addressing poor performance in employees at all levels. This has resulted in a spike in performance-based actions (e.g., performance-improvement plans, performance-opportunity plans, and performance-based removals) across the agency, which in turn has

resulted in a spike in EEO complaint activity. However, as the data demonstrates, this spike has not resulted in any findings of discrimination. And the FLRA workforce as a whole has welcomed management's commitment to address poor performance. For example, the 2017 results of the Office of Personnel Management's (OPM's) Federal Employee Viewpoint Survey (FEVS) show that 61% of the FLRA's respondents have a positive view of the statement "In my work unit, steps are taken to deal with a poor performer who cannot or will not improve" (Q. 23). This result is over 30% higher than the Government-wide average of 31%, and it is over 20% higher than the Government-wide average for all small agencies of 40%.

In addition, the FLRA continues to do well with respect to the FEVS New Inclusion Quotient (New IQ), which measures the inclusiveness of the work environment and provides insights into employee perceptions of the inclusiveness of the agency by looking at twenty questions that measure the five "Habits of Inclusion" – Fair, Open, Cooperative, Supportive, and Empowering. The FLRA outperforms both the small-agency average and the Government-wide average for *each* of the five habits of inclusion. Moreover, 73 percent of FLRA respondents – compared to 71 percent among all small agencies – reported that supervisors work well with employees of different backgrounds (Q. 55). And 69 percent of respondents – compared to 61 percent among all small agencies – stated that the FLRA's policies and programs promote diversity in the workplace (Q. 34). Further, 77 percent of FLRA employees – compared to 66 percent among all small agencies – reported that they can disclose a suspected violation of any law, rule or regulation without fear of reprisal (Q. 17).

The FLRA provides notice and training to employees regarding their rights relating to Antidiscrimination Laws and Whistleblower Protection Laws. In addition to the NoFEAR Act Notice currently posted on its intranet and internet sites (Attach. 2(c)), the FLRA posts and disseminates a notice that informs all employees of the prohibition on employment discrimination based on race, color, religion, sex, national origin, age, disability, genetic information, or retaliation and provides information on the procedures for instituting an EEO complaint. The FLRA issued an EEO Program Policy Statement signed by the head of the Agency (Attach. 2(b)), reaffirming the Agency's commitment to EEO. During FY 2017, consistent with OPM regulations implementing the requirements of § 201 of the NoFEAR Act, in particular, 5 C.F.R. § 724.403, the FLRA provided mandatory biennial NoFEAR Act training for all employees, including supervisors and managers. The FLRA also provided such training to all new employees hired during the FY within 90 days of hire, as required under § 724.403.

From FY 2012 to FY 2017, the FLRA consistently processed all EEO complaints within the time frames set forth in the Equal Employment Opportunity Commission's regulations at 29 C.F.R. Part 1614.

Item 8. *Any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligations:*

No.

Item 9. *The Agency's written plan developed in accordance with the NoFEAR Act to train its employees:*

See Attach. 3.

Attachment 1

**Federal Labor Relations Authority
No FEAR Act Data
(as of 9-30-17)**

Complaint Activity	Comparative Data Previous Fiscal Year Data					2017 through 9-30-17
	2012	2013	2014	2015	2016	
Number of Complaints Filed	1	6	2	0	1	2
Number of Complainants	1	5	2	0	1	1
Repeat Filers	0	1	1	0	1	0

Complaints by Basis	Comparative Data Previous Fiscal Year Data					2017 through 9-30-17
	2012	2013	2014	2015	2016	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	1	5	0	0	0	0
Color	0	1	0	0	0	0
Religion	0	0	0	0	0	0
Reprisal	1	2	2	0	1	1
Sex	0	2	1	0	0	1
National Origin	0	0	0	0	0	0
Equal Pay Act	0	1	0	0	0	0
Age	1	5	0	0	0	1
Disability	1	0	0	0	0	0
Genetic information	0	0	0	0	0	0
Sexual orientation	--	--	--	0	0	0
Non-EEO	0	0	1	0	0	0

**Federal Labor Relations Authority
No FEAR Act Data
(as of 9-30-17)**

Complaints by Issue	Comparative Data Previous Fiscal Year Data					2017 through 9-30-17
	2012	2013	2014	2015	2016	
<i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i>						
Appointment/Hire	0	0	0	0	0	1
Assignment of Duties	0	1	1	0	1	0
Awards	0	0	0	0	1	0
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0
Removal	0	0	1	0	0	0
Suspension	0	1	0	0	0	0
Other	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0
Evaluation Appraisal	0	0	3	0	0	1
Examination/Test	0	0	0	0	0	0
Harassment						
Non-Sexual	0	1	2	0	0	0
Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	0	0	2	0	0	0
Promotion/Non-Selection	1	0	0	0	0	0
Reassignment						
Denied	0	0	0	0	0	0
Directed	0	0	0	0	0	0
Reasonable Accommodation	0	1	0	0	0	0
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0
Training	0	0	2	0	0	0
Other	0	0	0	0	0	0

**Federal Labor Relations Authority
No FEAR Act Data
(as of 9-30-17)**

Processing Time	Comparative Data Previous Fiscal Year Data					2017 through 9-30-17
	2012	2013	2014	2015	2016	
Complaints pending during fiscal year						
Average number of days in investigation stage	248	208	154	0	154	170
Average number of days in final action stage	0	70	0	0	0	0
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation stage	0	208	154	0	0	0
Average number of days in final action stage	0	0	0	0	0	0
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation stage	248	0	0	0	0	0
Average number of days in final action stage	0	70	0	0	0	0

**Federal Labor Relations Authority
No FEAR Act Data
(as of 9-30-17)**

Complaints Dismissed by Agency	Comparative Data Previous Fiscal Year Data					2017 through 9-30-17
	2012	2013	2014	2015	2016	
Total Complaints Dismissed by Agency	0	1	1	0	0	0
Average days pending prior to dismissal	0	70	115	0	0	0

	Comparative Data Previous Fiscal Year Data					2017 through 9-30-17
	2012	2013	2014	2015	2016	
Complaints Withdrawn by Complainants	0	2	4	0	0	0

Total Final Actions Finding Discrimination	Comparative Data Previous Fiscal Year Data											
	2012		2013		2014		2015		2016		2017 through 9-30-17	
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		0		0	
Without Hearing	0	0	0	0	0	0	0	0	0	0	0	0
With Hearing	0	0	0	0	0	0	0	0	0	0	0	0

**Federal Labor Relations Authority
No FEAR Act Data
(as of 9-30-17)**

Findings of Discrimination Rendered by Basis	Comparative Data Previous Fiscal Year Data											
	2012		2013		2014		2015		2016		2017 through 9-30-17	
	#	%	#	%	#	%	#	%	#	%	#	%
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>												
Total Number Findings	0	0	0	0	0	0	0	0	0	0	0	0
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetic Information	--	--	0	0	0	0	0	0	0	0	0	0
Sexual orientation	--	--	--	--	--	--	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

**Federal Labor Relations Authority
No FEAR Act Data
(as of 9-30-17)**

Findings of Discrimination Rendered by Basis	Comparative Data Previous Fiscal Year Data											
	2012		2013		2014		2015		2016		2017 through 9-30-17	
	#	%	#	%	#	%	#	%	#	%	#	%
Findings After Hearing	0	0	0	0	0	0	0	0	0	0	0	0
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetic Information	--	--	0	0	0	0	0	0	0	0	0	0
Sexual orientation	--	--	--	--	--	--	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data Previous Fiscal Year Data											
	2012		2013		2014		2015		2016		2017 through 9-30-17	
	#	%	#	%	#	%	#	%	#	%	#	%
Findings Without Hearing	0	0	0	0	0	0	0	0	0	0	0	0
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetic Information	--	--	0	0	0	0	0	0	0	0	0	0
Sexual orientation	--	--	--	--	--	--	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

**Federal Labor Relations Authority
No FEAR Act Data
(as of 9-30-17)**

Findings of Discrimination Rendered by Issue	Comparative Data Previous Fiscal Year Data												
	2012		2013		2014		2015		2016		2017 through 9-30-17		
	#	%	#	%	#	%	#	%	#	%	#	%	
Total Number Findings	0	0	0	0	0	0	0	0	0	0	0	0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0	
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0	
Awards	0	0	0	0	0	0	0	0	0	0	0	0	
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0	
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0	
Demotion	0	0	0	0	0	0	0	0	0	0	0	0	
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0	
Suspension	0	0	0	0	0	0	0	0	0	0	0	0	
Removal	0	0	0	0	0	0	0	0	0	0	0	0	
Other	0	0	0	0	0	0	0	0	0	0	0	0	
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0	
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0	
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0	
Harassment	0	0	0	0	0	0	0	0	0	0	0	0	
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0	
Sexual	0	0	0	0	0	0	0	0	0	0	0	0	
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0	
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0	
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0	
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0	
Denied	0	0	0	0	0	0	0	0	0	0	0	0	
Directed	0	0	0	0	0	0	0	0	0	0	0	0	
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0	
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0	
Retirement	0	0	0	0	0	0	0	0	0	0	0	0	
Termination	0	0	0	0	0	0	0	0	0	0	0	0	
Terms / Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0	
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0	
Training	0	0	0	0	0	0	0	0	0	0	0	0	
Other	0	0	0	0	0	0	0	0	0	0	0	0	

**Federal Labor Relations Authority
No FEAR Act Data
(as of 9-30-17)**

Findings of Discrimination Rendered by Issue	Comparative Data Previous Fiscal Year Data											
	2012		2013		2014		2015		2016		2017 through 9-30-17	
	#	%	#	%	#	%	#	%	#	%	#	%
Findings After Hearing	0	0	0	0	0	0	0	0	0	0	0	0
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms / Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0

**Federal Labor Relations Authority
No FEAR Act Data
(as of 9-30-17)**

Findings of Discrimination Rendered by Issue	Comparative Data Previous Fiscal Year Data											
	2012		2013		2014		2015		2016		2017 through 9-30-17	
	#	%	#	%	#	%	#	%	#	%	#	%
Findings Without Hearing	0	0	0	0	0	0	0	0	0	0	0	0
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms / Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0

**Federal Labor Relations Authority
No FEAR Act Data
(as of 9-30-17)**

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data Previous Fiscal Year Data					2017 through 9-30-17
	2012	2013	2014	2015	2016	
Total complaints from previous Fiscal Years	0	1	2	3	2	0
Total Complainants	0	1	2	2	2	0
Number complaints pending						
Investigation	0	0	0	0	0	0
Hearing	0	0	0	2	1	0
Final Action	0	0	0	0	0	0
Appeal with EEOC Office of Federal Operations	0	0	1	1	1	0

Complaint Investigations	Comparative Data Previous Fiscal Year Data					2017 through 9-30-17
	2012	2013	2014	2015	2016	
Pending Complaints Where Investigations Exceeds Required Time Frames	0	0	0	0	0	0

Attachment 2(a)

FEDERAL LABOR RELATIONS AUTHORITY

**OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.**

INSTRUCTION

FLRA 3700.1B

SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY

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Alternative Dispute Resolution Plan for EEO Disputes

Adden

FEDERAL LABOR RELATIONS AUTHORITY

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**INSTRUC
TION**

**OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.**

FLRA 3700.1B

SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY

CHAPTER I: GENERAL PROVISIONS

- A. PURPOSE: This Instruction sets forth the policies and procedures of the Federal Labor Relations Authority (FLRA) to promote and achieve equal opportunity in employment and personnel practices within the FLRA without regard to race, color, religion, sex, national origin, age, or physical or mental disability. In carrying out such purpose, all rights created by statute, regulation, collective bargaining agreement or case law for the exclusive representative of FLRA employees will be followed.
- B. CANCELLATION: This cancels FLRA Instruction, FLRA 3700.1A, issued April 11, 1986.
- C. SCOPE: This Instruction applies to all employees of the FLRA and those individuals who apply for employment with the FLRA.
- D. REFERENCES:
- a. Executive Order 11478 of August 8, 1969, as amended;
 - b. Public Law 88-352, Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000(e)-16);
 - c. Public Law 93-112, The Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 791 and 794(a));
 - d. Public Law 93-259, The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d));
 - e. Public Law 93-259, Section 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. § 633(a));
 - f. The Equal Employment Opportunity Commission (EEOC) Federal Sector Complaint Procedures (29 C.F.R. Part 1614); and

- g. The EEOC Management Directive, MD-110 (November 9, 1999).
- E. POLICY: It is the policy of the FLRA to provide equal employment opportunity (EEO) for all persons; to prohibit discrimination in employment because of race, color, religion, sex, national origin, age or disability; to promote the full realization of EEO through a continuing affirmative program; and to resolve complaints at the earliest possible stage. This policy is an integral part of every aspect of the FLRA's personnel management program and is intended to help resolve, overcome and/or eliminate problems affecting employment of qualified applicants, the advancement and treatment of employees, and the delivery of program services to the public. While it is also the FLRA's policy to prohibit discrimination in employment because of marital status, sexual orientation or political affiliation, redress for such alleged discrimination must be pursued through existing appeals procedures beyond the scope of this Instruction.
- F. RESPONSIBILITY: The responsibility for assuring that equal opportunity is realized within the FLRA rests with every employee. The following sets forth specific responsibilities for designated officials in discharging specific programmatic aspects of the FLRA's EEO program.
1. Chairman. The Chairman of the FLRA has the overall responsibility for the FLRA's EEO program and shall:
 - a. provide personal leadership in establishing, maintaining and carrying out a continuing affirmative program designed to promote equal opportunity for all employees and all applicants for employment in every aspect of the FLRA's policies and practices;
 - b. provide sufficient resources to carry out a positive, innovative and continuing EEO program; and
 - c. annually review the EEO program to ensure that its direction, capability and results are consistent with the stated equal employment opportunity goals of the FLRA.
 2. Director, EEO Affirmative Action Program.

The Director of Human Resources is delegated the authority to maintain a continuing affirmative action program to promote equal employment opportunity. FLRA's EEO Affirmative Action Program Director shall report directly to the Chairman and develop and implement affirmative plans that:

1. communicate the Agency's EEO policy and program to all sources of job candidates;
 2. work with Agency managers to develop solutions to problems of recruitment, training, employee utilization, and career advancement with other individuals within the FLRA;
 3. train managers and supervisors to ensure their understanding and implementation of the EEO affirmative program;
 4. collect and maintain accurate employment information on the race, national origin, sex and handicap(s) of its employees to use in studies and analyses which contribute affirmatively to achieving the Agency's EEO objectives; and
 5. periodically evaluate the sufficiency and responsiveness of the Agency Affirmative Action Program and report findings and recommendations to the Chairman.
3. Director, Equal Employment Opportunity Complaints (EEO).

The EEO Director is delegated the authority for managing the FLRA's equal employment opportunity complaints programs. The EEO Director shall report directly to the Chairman concerning EEO matters, and shall:

- a. develop and implement operating guidelines and instructions for the FLRA's EEO complaints programs;
- b. make written materials available to all employees and applicants in every FLRA location concerning all established EEO complaints programs and the administrative and judicial procedures available to them, and post the names and business telephone numbers of all EEO counselors at every FLRA location;
- c. develop EEO complaints reports, as required;
- d. manage the EEO counseling process, and incorporate alternative dispute resolution (ADR) procedures wherever deemed appropriate, to attempt to resolve matters at the earliest possible stage and to provide a workable process of investigations, dispute resolutions, hearings, as necessary, and final decisions;
- e. participate with the EEO Affirmative Action Director and other public

and private sector employees, groups, and organizations in cooperative action to improve employment opportunities for all groups;

- f. evaluate periodically the sufficiency and responsiveness of the EEO complaints program and report findings with recommendations to the Chairman;
 - g. evaluate the effectiveness of the FLRA's non-EEO programs and procedures, including general personnel management, the Selective Placement Program, the Upward Mobility Program, etc., for factors which may impede EEO progress, and propose appropriate corrective measures;
 - h. participate with the EEO Affirmative Action Director in developing solutions to problems of recruitment, training, employee utilization, and career advancement with other individuals within the FLRA, including the communication of FLRA's EEO complaints policy to all sources of job candidates and solicitation of recruitment assistance from those sources on a continuing basis, and the evaluation and training of managers and supervisors to ensure their understanding and implementation of the EEO complaints policy and program;
 - i. ensure that the FLRA makes reasonable accommodation to the religious needs of all employees and applicants when such accommodations can be made without undue hardship on the FLRA's business;
 - j. when authorized by the Chairman, make the final decision on complaints of discrimination, and order such corrective measures as considered necessary; and
 - k. when not authorized to make the final decision for the Chairman concerning issues on complaints of discrimination, review the record of a complaint before the final decision is made, and make such recommendations to the Chairman, as appropriate.
4. Equal Employment Opportunity Counselors. EEO counselors are selected by the EEO Director. They make informal inquiries and seek solutions to informal complaints. EEO duties and responsibilities are collateral duties which are performed in addition to a counselor's regular duties. EEO counselors shall receive a minimum of 32 hours of appropriate training prior to assuming their counseling responsibilities, and shall receive a minimum of 8 hours of training annually.
5. Equal Employment Opportunity Investigators. EEO investigators, including

contract investigators where appropriate, are selected by the EEO Director and are responsible for timely investigating formal complaints of discrimination submitted by employees or applicants of the FLRA. EEO investigators shall receive a minimum of 32 hours of appropriate training prior to performing EEO complaint investigations, and shall receive a minimum of 8 hours of training annually.

6. Managers and Supervisors. All managers and supervisors are responsible for promoting and implementing the FLRA's EEO program in their organizational units. They shall:
 - a. keep informed of all EEO program policies and procedures;
 - b. comply with FLRA EEO policy as set forth in this Instruction;
 - c. ensure that employees working as collateral-duty EEO Counselors are provided an adequate amount of time to carry out their counseling responsibilities in a timely manner;
 - d. provide all employees and applicants equal opportunity within the merit system in employment, development, career advancement, and treatment in their areas of responsibility;
 - e. consult with the FLRA Director of Human Resources and/or the EEO Director on personnel management decisions with EEO implications;
 - f. provide an atmosphere free from discrimination;
 - g. make reasonable accommodation to the religious needs and to the known physical or mental limitations of employees and applicants; and
 - h. cooperate with EEO Counselors and/or EEO Investigators in carrying out their EEO responsibilities.

7. Employees. Employees shall:
 - a. keep informed of all EEO program policies and procedures which affect their performance on the job;
 - b. cooperate with supervisors and managers in carrying out their responsibilities in the EEO Program;
 - c. comply with FLRA EEO policy as set forth in this Instruction;

- d. provide equal treatment of all individuals with whom they are in contact while in the performance of their official duties; and
- e. cooperate with EEO Counselors and/or EEO Investigators in carrying out their EEO responsibilities.

CHAPTER II: DISCRIMINATION COMPLAINT PROCEDURES

A. General Provisions for Processing Complaints.

1. Coverage. This chapter covers individual and class complaints of employment discrimination and retaliation, prohibited by Title VII, as amended, made by employees, former employees, and applicants who believe they have been discriminated against because of race, color, religion, sex, national origin, age, disability, and/or complaints of reprisal, as described below:
 - a. Race, Color, Religion, and National Origin. Allegations of discrimination filed by members of minority or majority groups and allegations of failure to accommodate religious needs.
 - b. Sex. Allegations of sex discrimination, including sexual harassment and sex-based wage claims, filed by either women or men.
 - c. Age. Allegations of age discrimination filed by persons who were at least 40 years of age when the action complained of took place. (See 29 C.F.R. § 1614.201).
 - d. Disability. Allegations of discrimination based on physical or mental impairment, including alleged failures to make reasonable accommodations. (See 29 C.F.R. § 1614.203).
 - e. Reprisals, Coercion or Intimidation. Allegations of reprisal, coercion, or intimidation made in connection with: (a) opposing employment discrimination; (b) seeking EEO counseling; (c) having filed a complaint of discrimination on grounds of race, color, religion, sex, national origin, physical or mental disability, or age; or (d) having participated in the complaint process. (See Paragraph I below).
2. Effect of Regulations. This Instruction is intended to supplement the procedures found in 29 C.F.R. Part 1614 and in EEOC MD-110. Employees are advised to consult these resources as well as this Instruction. In the event there is a conflict between the provisions of this Instruction and the applicable

regulations, the regulations will govern.

3. Employee Rights. All employees and applicants for employment have a right to file a discrimination complaint. Employees involved in the discrimination complaint process, including complainants, class agents, and witnesses, have the right to use a reasonable amount of official time under the administrative complaint process, and the right to be free from restraint, interference, coercion, discrimination, or reprisal. Individuals will be notified of their rights at each stage of the complaint process. (See Paragraph C).
4. Representatives. At any stage in the preparation and presentation of complaints or administrative appeals from decisions on complaints, complainants have the right to be accompanied, represented, and advised by a representative of their own choosing, including another FLRA employee, provided the choice does not involve a conflict of interest or position (e.g., an EEO counselor cannot also represent employees in processing discrimination complaints), does not conflict with the priority needs of the FLRA, and does not give rise to unreasonable costs to the Government.
 - a. FLRA Representative. The FLRA will designate its representative. The FLRA representative may not be an EEO staff member or, in the case of a class complaint, a member of the class.
 - b. Complainant or Class Agent's Representative. A complainant or class agent must promptly notify the EEO counselor or EEO Director in writing of the representative's identity. Any changes must also be reported in writing to one of them.
5. Time Extensions. A time limit may be extended if a complainant, agent, or claimant shows that: 1) he/she was not notified and was not otherwise aware of the time limit; 2) he/she did not know or reasonably should not have known that the alleged discriminatory action occurred; 3) circumstances beyond his/her control prevented submission of the matter within the time limit; or 4) for other reasons considered sufficient by the EEO Director. Time limits may also be reasonably extended for other reasons noted in the regulations. (See 29 C.F.R. §§ 1614.105(a)(2), 1614.105(e), 1614.105(f), and 1614.108(e)).
6. Computation of Time. Any time period specified in this chapter will be computed by counting as the first day the day following the event, such as the day after receiving a notice. When the last day falls on a Saturday, Sunday, or Federal holiday, the time period will be extended to include the next business day. (See 29 C.F.R. § 1614.604).

B. Definitions.

1. Individual Complaint. An individual complaint is a written complaint of discrimination filed by an employee, applicant for employment, or former employee alleging that a specific act of discrimination or reprisal has taken place and has adversely affected the individual. (For procedure, see Paragraph C, below).

2. Mixed Case. A mixed case complaint is a complaint of employment discrimination based on race, color, religion, sex, national origin, age or disability related to or stemming from an action that is appealable to the Merit Systems Protection Board (MSPB), such as a removal, demotion, suspension for more than 14 calendar days,

reduction in force, denial of within-grade increase, or furlough for less than 30 calendar days. (See 29 C.F.R. § 1614.302, and procedures at Paragraph D, below).

3. Class Complaint. A class complaint is a written complaint filed on behalf of a class by the agent of the class alleging that an FLRA personnel management policy or practice discriminates against a class and the agent has been personally harmed by the policy or practice. A class complaint is appropriate where: (1) the class is so numerous that a consolidated complaint of the members of the class is impractical; (2) there are questions of fact common to the class; (3) the claims of the agent of the class are typical of those of the class; and (4) the agent or representative of the class will fairly and adequately protect the interests of the class. (See 29 C.F.R. § 1614.204(a)(2)).
 - a. Class. A group of FLRA employees, former FLRA employees, and/or applicants for FLRA employment on whose behalf it is alleged that they have been, are being, or may be adversely affected by an FLRA personnel management policy or practice on the basis of their common race, color, religion, sex, national origin, physical or mental disability, and/or age.

 - b. Agent. A class member who acts for the class during the processing of the class complaint.

4. An Individual with Disability. An individual who: (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. (See 29 C.F.R. § 1614.203(a)(1)). This term shall not include an individual who is currently engaging in the illegal use of drugs, when the FLRA acts on the basis of such use, but may include an individual who has successfully completed or is currently participating in a supervised rehabilitation program, or is erroneously regarded as engaging in such drug use. (29 C.F.R.

§ 1614.203(h)). This term shall not exclude an individual with a physical or mental impairment caused by the use of alcohol.

5. Physical or Mental Impairment. (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respiratory, genitourinary, hemic and lymphatic, skin, and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (29 C.F.R. § 1614.203(a)(2)).
6. Has a Record of Such an Impairment. Means that an individual has a history of, or has been classified (or misclassified) as having, a mental or physical impairment that substantially limits one or more major life activities. (29 C.F.R. § 1614.203(a)(4)).
7. Is Regarded as Having Such an Impairment. Means that an individual has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment; or has none of the impairments defined in paragraph B.5. of this section but is treated by an employer as having such an impairment. (29 C.F.R. § 1614.203(a)(5)).
8. Major Life Activities. Functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (29 C.F.R. § 1614.203(a)(3)).
9. Qualified Individual with Disability. With respect to employment, a disabled person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who, depending upon the type of appointing authority being used: (1) meets the experience and/or education requirements (which may include passing a written test) of the position in question; or (2) meets the criteria for appointment under one of the special appointing authorities for disabled persons. (29 C.F.R. § 1614.203(a)(6)).
10. Civil Action. A complaint filed by an employee, class agent, claimant, applicant for employment, or former employee in a Federal district court.

C. Individual Complaint Procedures.

1. Precomplaint Procedures. An individual complainant who believes that he/she has been discriminated against must consult with an EEO counselor before

filing a complaint in order to pursue an informal resolution of the matter. The counselor may not reveal the complainant's identity during the informal counseling process unless so authorized by the complainant. The counselor can be contacted through the EEO Director or by notifying one of the EEO counselors listed in the FLRA telephone directory. The counselor must be contacted within 45 calendar days of the alleged discriminatory action, the effective date of an alleged personnel action, or the date that complainant knew, or reasonably should have known, of the discriminatory action. In an attempt to resolve the issue on an informal basis, the counselor shall advise the complainant, in writing, at the initial counseling session, of his or her rights and responsibilities including:

- a. the right to pursue only those matters raised in the precomplaint process in a subsequent complaint;
- b. the right to a hearing or an immediate FLRA decision after an investigation;
- c. the right to elect among procedures for pursuing allegations of discrimination (see 29 C.F.R. §§1614.106, 1614.201, 1614.301, and 1614.302);
- d. the obligation to mitigate damages;
- e. the obligation to keep the FLRA and EEOC informed of his or her current address; and
- f. the obligation to serve copies of an appeal on the FLRA.

The counselor shall also inform the complainant of administrative and judicial time limits. In addition, the counselor shall advise the complainant that, where the FLRA has deemed ADR appropriate, the complainant may choose either the ADR program or counseling. (See 29 C.F.R. § 1614.105). The FLRA's ADR program is set forth and described in an Addendum to this Instruction.

2. Time Limits. The counselor shall conduct the final interview within 30 calendar days of the date on which the complainant brought the matter to the counselor's attention. The 30-day counseling period may be extended for:

- a. up to an additional 60 calendar days if the complainant and the FLRA agree to such an extension in writing; or
- b. 90 calendar days if the FLRA and the complainant agree to participate in

an ADR procedure.

If the matter is not resolved to the satisfaction of the complainant, the counselor shall notify the complainant, in writing, of the right to file a complaint of discrimination up to 15 calendar days after complainant's receipt of the notice. The counselor shall also inform the complainant of the appropriate official with whom to file a complaint and of the complainant's duty to promptly inform the FLRA if the complainant retains a representative. (See 29 C.F.R. § 1614.105(d)).

When advised that a complaint has been filed by an aggrieved person, the counselor shall submit a written report within 15 calendar days to the EEO Director and to the aggrieved person concerning the issues discussed and actions taken during counseling.

3. Manner of Filing. A complaint must:
 - a. be signed by complainant or complainant's representative, and submitted to the Chairman;
 - b. describe the specific FLRA personnel management policy or practice giving rise to the complaint or the action that allegedly harmed the complainant; and
 - c. be filed within 15 calendar days of the date of receipt of the notice referred to in section C.2, above. The date of filing is the postmark date rather than when the complaint is received by the designated receiving official.
4. Amendment of Complaints. A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like those raised in the complaint. After requesting a hearing, a complaint may be amended only on motion to the administrative judge.
(See 29 C.F.R. § 1614.106(d)).
5. Transfer of Received Complaints. Upon receipt of the complaint, the receiving official shall transmit it to the EEO Director, who shall acknowledge its receipt in accordance with Paragraph C.6 below.
6. Acknowledgment of Complaint. The EEO Director shall acknowledge receipt of a complaint in writing, and shall inform the complainant of the date on which the complaint was filed. Such acknowledgment shall also advise the complainant that:
 - a. the complainant has the right to appeal the final decision or dismissal of all, or (subject to Paragraph 7b, below) a portion of, the complaint; and

- b. the FLRA is required to conduct a complete and fair investigation of the complaint within 180 calendar days of the filing of the complaint, unless the parties agree in writing to extend the period.

7. Dismissal of a Complaint.

- a. Prior to a request for a hearing, the Chairman, or his/her designee, shall dismiss an entire complaint for the reasons set forth in 29 C.F.R. § 1614.107, including where:
 - (1) the complainant has failed to contact an EEO counselor or has raised a matter that has not been presented to the EEO counselor and is unrelated to issues presented;
 - (2) the complaint is not timely filed (see 29 C.F.R. § 1614.107 (a)(2));
 - (3) the complaint lacks specificity and detail;
 - (4) the complaint involves matters not subject to FLRA control;
 - (5) the complainant fails to state a claim covered in this chapter (see 29 C.F.R. § 1614.107(a)(1));
 - (6) the claim is the same as one pending or previously decided by the FLRA or the EEOC (see 29 C.F.R. § 1614.107(a)(1));
 - (7) the claim relates to an issue that is moot or an action that is in a preliminary stage (see 29 C.F.R. § 1614.107(a)(5));
 - (8) the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant (see 29 C.F.R. § 1614.107(a)(6));
 - (9) the complainant has failed to: (a) proceed with the complaint without undue delay; or (b) respond to the FLRA's request to provide relevant information or otherwise proceed with the complaint (see 29 C.F.R. § 1614.107(a) (7));
 - (10) the complainant has filed a civil action in a Federal district court (see 29 C.F.R. § 1614.107(a)(3));
 - (11) the complaint alleges dissatisfaction with the processing of a previously filed complaint (see 29 C.F.R. § 1614.107(a)(8)); and/or

- (12) the complaint is part of a clear pattern of misuse of the EEO process. A clear pattern of misuse requires evidence of multiple complaint filings and (1) allegations that are similar or identical, lack specificity or involve matters previously resolved; or (2) evidence of circumventing other administrative processes, retaliating against the FLRA's in-house administrative processes or overburdening the EEO complaint system. (See 29 C.F.R. § 1614.107(a)(9)).

If the FLRA determines that the complaint does not meet the requirements of EEOC regulations, the FLRA will give the complainant a written notice of proposed dismissal of the complaint and an opportunity to respond or to provide a specific explanation and/or relevant information in writing within 15 calendar days. If such an explanation or information is not received within the 15 calendar days, the complaint will be dismissed. The FLRA will notify the complainant and his/her representative of its decision to dismiss the complaint. The content of the final decision is discussed in paragraph 10.b, below. Allegations may be withdrawn, in writing, at any time.

- b. Where the FLRA determines that some, but not all, of the claims in a complaint should be dismissed, the FLRA shall notify the complainant in writing of its determination, the rationale for that determination, and that those claims will not be investigated. A copy of this notice shall be placed in the investigative file. The determination is reviewable by an administrative judge if a hearing is requested on the remainder of the complaint, but it is not appealable until final action is taken on the remainder of the complaint.

8. Investigation of Allegations.

- a. General. The EEO Director shall provide for an independent, impartial, and prompt investigation of a complaint. An investigation is conducted in accordance with 29 C.F.R. § 1614.108 and shall include a complete and impartial review of:
 - (1) the circumstances under which the alleged discrimination occurred;
 - (2) the treatment of members of the complainant's group as compared with the treatment of other employees in the same organization; and
 - (3) any work-related policies and practices that may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant.

- b. Time Limits. The FLRA will conduct a complete and fair investigation within 180 calendar days of the filing date of the complaint (29 C.F.R. § 1614.108(e)) or, where the complaint has been amended, within the earlier of 180 days after the last amendment of the complaint or 360 days after the original complaint was filed (29 C.F.R. § 1614.108(f)), unless otherwise directed when an appeal from dismissal is involved. An extension of time is authorized for not more than:
- (1) 90 calendar days if the complainant and FLRA agree in writing; and/or
 - (2) 30 calendar days if the complaint file must be sanitized.
- c. Authority of the Investigator. An investigator is authorized to:
- (1) investigate all aspects of the complaint;
 - (2) require all FLRA employees to cooperate in the conduct of investigations;
 - (3) obtain sworn statements from FLRA employees who have knowledge of the events surrounding the complaint;
 - (4) obtain certified copies of relevant documents and information about a person's membership or nonmembership in a complainant's group; and/or
 - (5) where appropriate, when a party fails to provide requested information: (i) draw an adverse inference against the uncooperative party; (ii) establish the matter to which the requested information relates in favor of the opposing party; (iii) exclude other evidence submitted by the uncooperative party; (iv) issue, in whole or in part, a decision in favor of the party opposing the uncooperative party; or (v) take other appropriate action. (See 29 C.F.R. § 1614.108(c)(3)).
- d. Report of Investigation. A report of investigation will contain relevant documents and information, including affidavits or other sworn statements acquired during the investigation. A copy of the report of investigation will be furnished to the complainant or complainant's representative with a notice of complainant's right to an EEOC hearing or an immediate final FLRA decision without a hearing. Complainant must notify the EEO Director in writing of his/her choice within 30 calendar days of receiving the investigation file. If complainant does not

notify the FLRA within the 30-day period, the final FLRA decision may be issued.

9. Hearings. A hearing will be conducted when requested by the complainant, in writing, within the time limits specified in 29 C.F.R. § 1614.108(f). When a complainant requests a hearing, the FLRA shall request the EEOC to appoint an administrative judge to conduct the hearing. Procedures for the hearing can be found at 29 C.F.R. § 1614.109 and EEOC MD-110, Chap. 7. Where there is no issue of material facts, findings and conclusions may be issued without a hearing or other appropriate action may be taken. (29 C.F.R. § 1614.109(g)). Absent good cause, the administrative judge will issue a decision, and, where discrimination is found, order appropriate relief, within 180 calendar days of receipt by the administrative judge of the complaint file.
10. Offer of Resolution (see 29 C.F.R. § 1614.109(c)).
 - a. The FLRA may make an offer of resolution:
 - (1) to a complainant represented by an attorney, at any time after the filing of a formal complaint until 30 calendar days prior to a hearing, or
 - (2) to a complainant not represented by an attorney, at any time after the appointment of an administrative judge, but not later than 30 calendar days prior to the hearing.
 - b. An offer of resolution must be in writing and provide:
 - (1) an explanation of the possible consequences of failing to accept the offer;
 - (2) attorney's fees and costs, as of the date of the offer;
 - (3) any specific non-monetary relief; and
 - (4) any monetary relief, which may be offered as a lump sum, or may be itemized as to amounts and types.
 - c. The complainant shall have 30 calendar days from receipt of the offer to accept it. If the complainant does not accept the offer and the relief ultimately awarded, whether by an administrative judge, the FLRA, or the EEOC, is not more than the offer, the complainant may not recover attorney's fees or costs incurred after the end of the 30-day acceptance period. However, the EEOC may, in unusual circumstances, find that equitable considerations make it unjust to withhold such attorney's fees

and costs.

- d. An acceptance of an offer of resolution must be in writing and be postmarked or received by the FLRA within the 30-day period.

11. Final Action by the FLRA. The Chairman, or his/her designee, shall take the following final FLRA action on complaints based on information in the complaint file.

- a. Where an administrative judge has issued a decision, the FLRA shall issue a final order within 40 calendar days of receipt of the administrative judge's decision.

- (1) The final order shall notify the complainant whether or not the FLRA will implement the decision and order of the administrative judge, and must inform the complainant of the right of appeal, the right to file a civil action, applicable time limits, the name and address of the EEOC official with whom to file an appeal, and the name of the proper defendant in a civil action. A copy of the EEOC Form 573, Notice of Appeal/Petition, shall be attached. (See Paragraphs P and Q below);

- (2) If the final order does not fully implement the administrative judge's decision and order, the FLRA shall simultaneously file an appeal with the EEOC and append a copy of the appeal to the final order.

- (3) If the FLRA fails to issue a final order within the 40-day period, the decision of the administrative judge becomes the final action of the FLRA.

- b. When the FLRA dismisses a complaint in its entirety, receives a request for a final decision or does not receive a response to the notice referenced in paragraph C.8.d, above, it shall issue a final decision. The final decision shall include:

- (1) findings on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint;

- (2) when there is a finding of discrimination, appropriate remedies and relief in accordance with 29 C.F.R. § 1614.501; and

(3) when there is a finding of discrimination, the complainant and complainant's representative will be notified that in order to request attorney's fees or costs, a verified statement of costs and fees accompanied by an affidavit, executed by the attorney, must be submitted to the FLRA within 30 calendar days of receipt of the final decision. (See Paragraph O below).

c. Time Limits. The Chairman, or his/her designee, shall issue a final decision within 60 calendar days after:

(1) receiving a request for an immediate final FLRA decision;

(2) the 30-day period for requesting a hearing or an immediate final FLRA decision has expired, and the complainant has requested neither a hearing nor a final FLRA decision.

d. Transmittal of Decision. The final decision shall be transmitted to the complainant and complainant's representative by a method that will show the date of issuance and receipt.

D. Mixed Cases.

1. Choice of Procedures. Where a personnel action is appealable to the MSPB, an employee may appeal to the MSPB or file a discrimination complaint, but not both. The choice is made when a timely appeal is filed with MSPB or a formal complaint of discrimination is filed with the FLRA. (See 29 C.F.R. § 1614.302).

2. Mixed Case Appeals. When an individual elects to file a mixed case appeal with MSPB, the matter is processed pursuant to MSPB procedures. (See 5 C.F.R. § 1201).

3. Mixed Case Complaints. When an individual elects to file a formal discrimination complaint with the FLRA, it is processed pursuant to paragraph C above, with the following exceptions:

a. a complainant's appeal from a final FLRA decision and request for a hearing is made to MSPB, not EEOC;

b. a final FLRA decision shall be made within 45 calendar days after completion of the investigation without a hearing; or

c. if a final FLRA decision is not issued within 120 calendar days from the filing of a formal complaint, an employee may appeal to MSPB at any

time thereafter as specified at 5 C.F.R. § 1201.154((b)(2), or may file a civil action as specified at 29 C.F.R. § 1614.310(g), but not both.

4. Dismissal of Mixed Case Complaints. Mixed case complaints shall be dismissed for the reasons specified in paragraph C.7 above, and additionally shall be dismissed if the complainant has made a prior election of the MSPB procedures. (29 C.F.R. § 1614.302(c)(2)).
 5. Petition for Review of Final MSPB Decisions Involving Allegations of Discrimination. An individual who has been before the MSPB with a matter involving allegations of discrimination and has received a final MSPB decision may petition EEOC to consider the MSPB decision on the discrimination issues within 30 calendar days after receipt of notice of the final MSPB decision, or within 30 calendar days after the decision of an MSPB field office becomes final. (See 29 C.F.R. § 1614.303).
 6. Review Procedures. The procedures governing petitions for review of final MSPB decisions are set forth in 29 C.F.R. § 1614.303-305.
- E. Grievance Procedures. Neither the current collective bargaining agreement covering FLRA employees nor the FLRA administrative grievance procedure (FLRA Instruction 3820.1) currently permits the filing of grievances over matters covered by this Instruction.
- F. Age Discrimination Complaint Procedures.
1. Administrative Complaint. An individual within the protected age group may choose to use either the EEO complaint procedure or mixed case procedures, as applicable to the circumstances of the case.
 2. Civil Action. As an alternative to filing a complaint, an aggrieved individual may bypass the administrative complaint process and file a civil action directly in an appropriate United States district court. (See Paragraph Q.3.c and 29 C.F.R. § 1614.201(a)).
- G. Class Complaint Procedures (see 29 C.F.R. § 1614.204).
1. Precomplaint Procedures. Paragraph C.1 above applies to class complaints, with the following exceptions:
 - a. an employee or applicant who wishes to pursue a class complaint will be the agent of the class (hereinafter referred to as "agent"); and
 - b. the counselor shall explain class complaint procedures and the agent's responsibilities.

2. Manner of Filing. Paragraph C.3 above applies to class complaints, with the following exceptions:
 - a. the term "agent" is substituted for complainant; and
 - b. the complaint must describe the policy or practice adversely affecting both the class and agent.

3. Acceptance or Dismissal of a Complaint.
 - a. Within 30 calendar days of the FLRA's receipt of a complaint, the EEO Director will forward the complaint, a copy of the EEO counselor's report, relevant information, and FLRA recommendations to the EEOC. The EEOC will assign the complaint to an administrative judge. The administrative judge may dismiss the complaint for any of the reasons found in paragraph C.7, above, or because the complaint does not meet the prerequisites of a class complaint.
 - b. The administrative judge will transmit the decision to accept or dismiss the class complaint to the FLRA and the agent. The FLRA must issue its final order within 40 calendar days of receipt of the administrative judge's decision.
 - (1) The final order shall notify the agent whether or not the FLRA will implement the decision and order of the administrative judge, and must inform the agent of the right of appeal, the right to file a civil action, applicable time limits, the name and address of the EEOC official with whom to file an appeal, and the name of the proper defendant in a civil action. A copy of the EEOC Form 573, Notice of Appeal/Petition, shall be attached. (See Paragraphs P and Q below).
 - (2) If the final order does not fully implement the administrative judge's decision and order, the FLRA shall simultaneously file an appeal with the EEOC and append a copy of the appeal to the final order.
 - (3) If the FLRA fails to issue a final order within the 40-day period, the decision of the administrative judge becomes the final action of the FLRA.
 - (4) A dismissal of a class complaint shall inform the agent either that the complaint is being accepted as of that date as an individual complaint to be processed under paragraph C, above, or that the complaint is also being dismissed as an individual complaint.

- c. Within 15 calendar days of receiving notice that the administrative judge has accepted a class complaint (or a reasonable time set by the administrative judge), the FLRA shall, by reasonable means, notify all class members of the acceptance of a class complaint.

4. Obtaining Evidence.

- a. Once the class complaint is accepted, the agent or the agent's representative and the FLRA representative shall be given a period of at least 60 calendar days to prepare their cases and develop evidence through accepted discovery techniques. The time for developing evidence may be extended, upon the request of either party, by the administrative judge.
- b. If cooperative efforts fail, either party may request a ruling from the administrative judge on a request to develop evidence. A party's failure to comply with such a ruling without good cause may result in the administrative judge's action(s) set forth at 29 C.F.R. § 1614.204(f).
- c. During the period for development of evidence, the administrative judge may direct that an investigation of facts relevant to the complaint be conducted by an agency certified by the EEOC, and that a copy of that investigative file be given to the representatives of each party.

5. Opportunity for Resolution. After the evidence is developed, the administrative judge shall furnish the agent or the agent's representative and the FLRA representative a copy of all pertinent documents and provide opportunities for discussion and resolution. Any resolution will be reduced to writing, signed by the agent and/or class representative, and the FLRA's representative. The complaint may be resolved at any time pursuant to the notice and approval provisions set forth below.

- a. Notice. If a resolution is proposed, notice must be given to all members of the class. The notice must include a copy of the proposed resolution, set out the relief, if any, the FLRA will grant, and inform the class members that the resolution will bind all class members. The notice must also inform the members of the right to object to the resolution to the administrative judge within 30 days of receipt of the notice.
- b. Approval. The FLRA will provide the administrative judge with the proposed resolution and the notice sent to the class members. If the administrative judge determines that the resolution is not fair, adequate and reasonable, the agreement between the class agent and the FLRA will be vacated. The class agent, class members and the FLRA may appeal the determination to the EEOC. If the administrative judge

determines that the resolution is fair, adequate and reasonable, the resolution becomes binding. Any class member who filed objections to the proposed resolution may appeal the administrative judge's decision.

6. Hearings. A hearing shall be conducted in accordance with 29 C.F.R. § 1614.109 (a)-(f).
7. Findings and Recommended Decision. The EEOC will send the hearing record, analysis and findings, and recommended decision on the complaint to the FLRA Chairman, or his/her designee, and will notify the agent of the date on which this was done.
8. Final FLRA Decision. Within 60 calendar days of receipt of the administrative judge's findings and recommendations, the FLRA must issue a decision to accept, reject, or modify those findings and recommendations. If the FLRA does not issue a decision within 60 calendar days, the administrative judge's findings and recommendations become the decision of the FLRA. The decision shall be served on the class agent within 5 calendar days of the expiration of the 60-day period.
 - a. If the final FLRA decision dismisses the class element of the complaint, the allegations of individual discrimination shall be processed under paragraph C above.
 - b. A final decision finding discrimination is binding on the class. A finding of no discrimination is not binding on a class member's individual complaint.
 - c. The FLRA shall notify class members of the final FLRA decision and the relief awarded, if any, through the same medium used to give notice of the existence of the class complaint and within 10 calendar days of transmittal of the decision to the agent.

H. Complaints Based on Physical or Mental Disability.

- _____ 1. The FLRA shall make reasonable accommodation to the known physical or mental limitations of a qualified disabled applicant or employee unless the FLRA can demonstrate that the accommodation would impose an undue hardship on the operation of its program. (See 29 C.F.R. § 1614.203(c)).
2. Reasonable accommodation may include, but shall not be limited to:
 - (1) making facilities readily accessible to and usable by disabled persons; and
 - (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of

examinations, the provision of readers and interpreters, or other similar actions.

3. In determining whether an accommodation would impose an undue hardship on the operation of the FLRA, factors to be considered include: (1) the overall size of the FLRA's program with respect to the number of employees, number and type of facilities and budget; (2) type of FLRA operation, including the composition and structure of the FLRA's work force; and (3) the nature and cost of the accommodation.
4. The FLRA is required to consider reassignment whenever a nonprobationary employee with a disability can no longer perform his/her duties, and must reassign such an employee when the circumstances described in 29 C.F.R. § 1614.203(g) are met. The undue hardship concept applies to reassignments, just as it does to reasonable accommodations.

I. Complaints of Reprisal.

1. Manner of Filing. Any employee who believes he/she has suffered restraint, interference, coercion, discrimination, or reprisal based on his/her: (1) opposition to discriminatory FLRA policies or practices; and/or (2) participation in a discrimination complaint procedure, may file formal charges of reprisal. Allegations of reprisal may be processed as an individual complaint of discrimination, or as a mixed case if related to an FLRA action which is appealable to MSPB. (See Paragraphs C, D, and E above).
2. Allegations at Hearing Stage. If a complainant alleges restraint, interference, coercion, discrimination, or reprisal, during the hearing stage, the EEOC may consolidate the allegations with any pending complaint.

J. Complaints Against the FLRA Chairman, the EEO Director or an EEO Counselor.

1. Chairman. When the FLRA Chairman is named in an individual capacity in a complaint of discrimination, a designee named by the Chairman will take any action that is otherwise the primary responsibility of the Chairman.
2. EEO Director or EEO Counselor. The EEO Director and EEO counselors shall not participate in the complaint process if named in any capacity in a complaint of discrimination. The EEO Director shall notify the FLRA Chairman of his/her disqualification and shall refer the complaint file to the Chairman. The Chairman shall designate a person to receive and process the complaint.

K. Compliance with Settlement Agreements.

1. When a complainant believes that the FLRA has failed to comply with the terms of a settlement agreement, he/she must notify the EEO Director in writing, within 30 calendar days of when he/she knew or should have known of the alleged noncompliance. (See 29 C.F.R. § 1614.504 and Paragraph O.4, below). The complainant may request that the agreement be specifically implemented or that the complaint be reinstated.
2. The FLRA shall respond to the complainant in writing. If the FLRA fails to respond or the complainant is dissatisfied with the response, the complainant may appeal to the EEOC in accordance with 29 C.F.R. § 1614.504. The complainant may file an appeal 35 calendar days after serving the EEO Director with the allegations of noncompliance, but must file an appeal within 30 days of the FLRA's response.

L. Complaints Alleging Violation of the Equal Pay Act.

1. Complaints alleging violation of the Equal Pay Act may be filed as an individual or class complaint. (See Paragraphs C and G above, 29 C.F.R. § 1614.202, and C.F.R. § 1614.409).
2. In its enforcement of the Equal Pay Act, the EEOC has the authority to investigate the FLRA's employment practices on its own initiative at any time in order to determine compliance with the provisions of the Act. The EEOC will provide notice to the FLRA when it will be initiating an investigation.

M. Consolidation and Joint Processing of Complaints (see 29 C.F.R. § 1614.606).

1. Complaints filed by different persons relating to the same or similar issues may, after appropriate notice to the parties, be consolidated for joint processing.
2. Two or more complaints of discrimination filed by the same individual shall be consolidated after appropriate notice to the complainant. There is one investigation, one attempted informal adjustment, one proposed disposition, and one hearing when complaints have been joined for processing.

N. Attorney's Fees and Costs (29 C.F.R. § 1614.501(e)). The FLRA is authorized to award reasonable attorney's fees or costs incurred in the processing of an administrative complaint when there is a finding of discrimination or reprisal, as follows:

1. attorney's fees may be awarded for services performed after the filing of the complaint and after the complainant has notified FLRA that (s)he is represented; and

2. attorney's fees may be awarded only to members of the bar and law clerks, paralegals, or law students under the supervision of members of the bar. No fees may be awarded, however, for the services of any employee of the Federal government.

The amount of the attorney's fees and costs is determined under 29 C.F.R. § 1614.501(e). If the FLRA determines not to award attorney's fees or costs to a prevailing complainant, the FLRA will give specific reasons for denying the award. Attorney's fee awards may be appealed to the EEOC. (See Paragraph O, below).

O. Appeals to the Equal Employment Opportunity Commission.

1. Procedures. The procedures governing appeals on individual and class complaints and grievances (if applicable) are found at 29 C.F.R. § 1614.401-406. A written appeal must be submitted by mail, personal delivery or facsimile ((202) 663-7022) to the Director, Office of Federal Operations, EEOC, P. O. Box 19848, Washington, D.C. 20036. The complainant should use EEOC Form 573, Notice of Appeal/Petition, and describe the FLRA decision giving rise to the appeal. (See 29 C.F.R. § 1614.403(a)).
2. Appealable Matters. Appealable matters include:
 - a. dismissal of an entire complaint;
 - b. the final FLRA decision on the merits and/or partial dismissal of the complaint;
 - c. the award of attorney's fees or costs; and
 - d. failure to comply with the terms of a settlement agreement. (See 29 C.F.R. § 1614.504).
3. Nonappealable Decisions. A complainant may not appeal to the EEOC when: (i) the FLRA dismisses some but not all claims in a complaint; (ii) a determination has not been made on all issues in the complaint; (iii) the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other appeal by the complainant to the EEOC; (iv) a final FLRA decision has been issued on the merits of the mixed case complaint; or (v) an FLRA decision rejects or cancels a mixed case complaint, unless a misapplication of procedures is alleged.
4. Time Limits.
 - a. FLRA Decisions. A complainant may appeal any matters outlined in paragraph O.2. to the EEOC within 30 calendar days of receiving the

dismissal or final decision. If there is an attorney of record, the 30-day period will run from the day the attorney received the dismissal or final FLRA decision. Time limits may be extended, at the discretion of the EEOC Office of Federal Operations, upon a showing that complainant was not notified of the time limit and was not otherwise aware of it, or that circumstances beyond his/her control prevented the filing of an appeal within the time limit.

- b. Noncompliance Complaint. If the FLRA fails to respond, in writing, within 30 calendar days of receipt of allegations of noncompliance, or if complainant is not satisfied with the FLRA attempt to resolve the allegations, the complainant may appeal to EEOC. A complainant may file an appeal 35 calendar days after the service of the allegations of noncompliance, but must file within 30 calendar days after receiving the final FLRA decision.

5. Briefs. Any statement or brief in support of the appeal must be submitted to EEOC and FLRA representatives within 30 calendar days of filing the notice of appeal.

P. Civil Actions (see 29 C.F.R. §§1614.407-409).

1. Statutory Rights. The FLRA will notify complainants, agents, and claimants, of the right to file civil actions and the applicable time frames.
2. Proper Defendant. When a civil action is filed, the FLRA Chairman is the appropriate official to be named as defendant in captioning the complaint.
3. Time Limits.
 - a. Individual and Class Complaints and Claims. A complainant or class agent may file a civil action alleging Title VII, Age Discrimination in Employment Act, or Rehabilitation Act violations in an appropriate Federal district court: (a) within 90 calendar days of receiving notice of the final FLRA decision on a complaint or claim where no appeal has been filed; (b) after 180 calendar days of filing a complaint or claim with the FLRA, if there has been no decision on the complaint or claim; (c) within 90 calendar days of receiving the final EEOC decision on an appeal; or (d) after 180 calendar days of filing an appeal with the EEOC, if there has been no final EEOC decision. (See 20 C.F.R. § 1614.407).

A complainant or class agent may file a civil action alleging violation of the Equal Pay Act in an appropriate Federal district court within two (2) years or, if the violation is willful, within three (3) years of the alleged

violation. (See 29 C.F.R § 1614.409).

- b. Mixed Case Complaints. A mixed case complainant may file a civil action in an appropriate Federal district court within 30 calendar days of receiving: (a) the final FLRA decision, unless an appeal is filed with MSPB; (b) the MSPB decision, unless a petition for consideration is filed with EEOC; (c) the EEOC decision not to consider the MSPB decision; (d) EEOC's concurrence with the MSPB decision; (e) the MSPB's concurrence and adoption of the EEOC decision, if the EEOC differs from the MSPB decision; and (f) the Special Panel decision, if MSPB disagrees with the EEOC decision and reaffirms its initial decision with or without revisions. A civil action may also be filed: (a) after 120 calendar days of filing a complaint with the FLRA if there has been no final FLRA decision on the complaint; (b) after 120 calendar days of filing an appeal with MSPB if there has been no decision on the appeal; or (c) after 180 calendar days of filing a petition for consideration with EEOC if there is no decision by the Commission, reconsideration decision by the MSPB, or decision by the Special Panel. (See Paragraph D above, 29 C.F.R. § 1614.310).
- c. Age Complaints. A complainant or agent may serve the EEOC with a notice of intent to file a civil action, and after 30 calendar days, may file a civil action in an appropriate Federal district court. The notice of intent must be filed within 180 calendar days after the alleged discriminatory act occurred. (See 29 C.F.R. § 1614.201).

Q. Confidentiality.

- 1. Precomplaint Process. The identity of an aggrieved person will be maintained on a confidential basis in the precomplaint process unless the person authorizes the counselor to reveal the person's identity.
- 2. Postcomplaint Process
 - a. The complainant, the complainant's representative, and the FLRA representative will be provided copies of the complaint file, including the investigative report.
 - b. Information and documents may also be disclosed to a witness who is a federal employee where the investigator determines that the disclosure of the information is necessary to obtain further information from the witness (see MD-110, Chap. 6, § VIII.A.).

R. Use of Official Time and Resources.

1. Official Time and Resources. FLRA employees involved in the complaint process, such as complainants, agents, witnesses, and representatives, have the right to use a reasonable amount of official duty time and FLRA resources, including library research, copy machines and office supplies, as needed, to prepare a complaint under this chapter.
2. Reasonable refers to the time necessary to allow a complete presentation of information associated with the complaint. The time will vary depending on the nature and complexity of the complaint and the FLRA's need to have its employees available to perform their normal duties on a regular basis.
3. Official duty time refers to time used during working hours without charge to leave or loss of pay.
4. Employees who do not request anonymity during precomplaint procedures or who file a formal complaint must get advance approval from their immediate supervisors to use official time prior to meeting with EEO personnel.
5. Employees who request anonymity during precomplaint procedures must use annual leave or schedule meetings with EEO personnel before or after regular office hours or during scheduled lunch periods.

This Instruction is effective June 27, 2001.

Solly Thomas
Executive Director

Alternative Dispute Resolution for EEO Disputes

Federal Labor Relations Authority

The FLRA's ADR program provides an alternative to the informal counseling process and an option during the formal complaint process, currently provided for in the EEOC's regulations codified in 29 C.F.R. Part 1614. Additionally, it will complement the formal complaint process. This ADR program supersedes all other existing EEO-related ADR programs at the FLRA.

I. INTRODUCTION

This ADR program will be administered in a manner which is consistent with the core principles as outlined in the EEOC's Management Directive (MD-110), including fairness, flexibility, and an emphasis on training and evaluation.

The FLRA's ADR program is mediation, and is available as an alternative to informal EEO counseling, or during the formal complaint process, for aggrieved persons who believe they have been discriminated against based on race, color, sex (including sexual harassment), age, religion, national origin, disability (mental and/or physical), and reprisal, coercion or intimidation as referenced in the FLRA's EEO instruction (to which this ADR program is attached).

The ADR program is designed to settle disputes without litigation or administrative adjudication. ADR is intended to address individual disputes within a reasonable period at the informal stage of the EEO process by using trained mediators to facilitate resolution. If ADR is chosen during the informal counseling stage, the initial thirty (30) day informal period is extended to 90 calendar days. This replaces the informal counseling process. The second opportunity for ADR is during the formal complaint process. A formal complaint must be timely filed, and if ADR is requested during that stage of the process, the time period for processing the complaint may be extended by agreement for not more than 90 days. If the dispute is not resolved, the complaint must be processed within the extended time period.

The aggrieved person may request ADR, or its use may be recommended by a management official or an EEO counselor.

Participation in the ADR program by the aggrieved person is strictly voluntary. However, when the aggrieved person elects to participate in the ADR program, appropriate management officials are required to participate in this program as well. Management will abide by the procedural requirements of the ADR program. The agency will designate management officials who have the authority to enter into a settlement agreement. This official with settlement authority will not be the official directly involved in the case. As explained below, the aggrieved person and FLRA management are entitled to be represented throughout the ADR process.

Due to the voluntary nature of this process, any participant can terminate ADR after sessions have begun. Participants should realize that this is an alternative process, and therefore all EEO processes are still available if ADR is not successful.

II. DIFFERENCES BETWEEN INFORMAL COUNSELING AND MEDIATION

A. EEO Counseling

During the informal counseling period, an EEO counselor works with the aggrieved person and management to gather information on the matter and attempts to resolve the dispute. If the matter is not resolved during this period, the EEO counselor writes a counseling report that documents the alleged discrimination and any attempts at settlement. The counseling report must detail the issue(s), basis of discrimination claimed, and address any other jurisdictional questions. The counseling report is subsequently used in the processing of the formal complaint to determine the scope of the complaint. Counselors are trained to gather information (interview witnesses and gather records and documents) about the matter in order to effectively write the counseling report. The EEO counselor generally focuses on gathering information from each individual separately. Informal resolution efforts by the counselor are usually pursued by circulating information and resolution proposals between the parties rather than directly holding joint discussions.

B. ADR

ADR involves alternatives to formally established processes, usually litigation, for resolving disputes. In the context of EEO processes, ADR generally provides an alternative to the traditional informal EEO counseling and/or formal complaint processes. ADR usually involves a third-party neutral such as a mediator or facilitator working with the parties in dispute to facilitate communication and assist them in working toward a resolution of their dispute. Generally, the third-party neutral is a process expert, skilled in a particular type of ADR.

The FLRA's ADR program involving the use of mediation is available for all cases at any time during the EEO process. However, the objective is to seek informal resolution of alleged employment discrimination through FLRA's EEO process at the earliest possible time while not infringing upon the rights guaranteed under 29 C.F.R. Part 1614.

Mediators are neutral third parties whose focus is to facilitate communication and problem solving by the individual disputants. Mediators work to identify common ground between the parties and help them develop options for resolving their dispute. The mediator is someone from outside the disputants' office/organization who has no interest in the matter. The mediator meets with the disputing parties and their representative (s) (if any) jointly to discuss the issues and ways of possibly resolving the dispute.

The mediator may meet separately with the parties to further discuss the issues and explore possible settlement options privately. The mediator may carry settlement offers between the parties. Mediators do not evaluate the merits of the matters in dispute or the fate of the potential case if the matter is not resolved through mediation and is pursued through the formal complaint process and litigation in the courts. However, the mediator may provide information about the resolution of similar disputes. The parties retain complete control over the outcome. The parties decide whether or not to continue with mediation, whether or not to resolve the matter through a settlement agreement, and how to fashion the terms of their agreement. Mediation is a confidential process, as more fully discussed in part IV., below. The mediator does not keep records or write reports or otherwise disclose anything about the mediation proceedings. Since they have no role in documenting the matter, mediators do not engage in fact-finding activities. If the mediation does not result in a resolution of the matter during the informal stage, the EEO Counselor will be informed only that mediation has not resolved the dispute. Thereafter, the aggrieved person will receive written notice from the EEO counselor that if he/she wishes to go forward with the dispute, a formal complaint must be filed with the EEO Director. The mediator will play no role in advancing the EEO process. Mediation may continue, however, into the formal stage of the complaint process so long as a formal written complaint has been timely filed.

III. WHO IS COVERED BY THE ADR PROGRAM

This ADR program covers EEO disputes initiated by all current employees, former employees concerning matters arising during their employment, and applicants for FLRA employment. Coverage extends to both bargaining and non-bargaining unit employees who present issues that are covered under the applicable statutes and EEOC regulations. Also, the program covers aggrieved persons who are currently involved in the pre-complaint counseling stage. However, for the latter instances, the pre-complaint process cannot extend the period for filing a formal EEO complaint beyond the 90 day period (discussed during the introduction of this program) provided in 29 C.F.R. Part 1614 for informal counseling. Even if the aggrieved person files a formal complaint, any informally initiated ADR process may continue, if all parties agree.

IV. CONFIDENTIALITY

In general, a mediator is prohibited from disclosing any dispute resolution communication or any communication provided to the mediator in confidence, including personnel data such as performance evaluations. A dispute resolution communication is any oral or written communication prepared for purposes of a proceeding under this program, except any written agreement to mediate or any final written agreement reached as a result of this program. Unless the communication falls within one of the exceptions discussed below, the mediator cannot voluntarily disclose the communication and cannot be forced to disclose the communication through a discovery request or other compulsory process.

A mediator may disclose a communication if all parties and the mediator agree in writing to the disclosure. A mediator may disclose a communication if the communication already has been made public. A mediator may disclose a communication if there is a statute that requires the communication to be made public. A mediator may disclose a communication if so ordered by a court. Courts may order disclosure upon finding that the mediator's testimony or the disclosure is necessary to prevent a manifest injustice, help establish a violation of law, or prevent harm to the public health and safety. Courts may require disclosure upon determining that the need for disclosure outweighs the detrimental impact on the integrity of dispute resolution proceedings in general.

The EEO Director or his/her designee will assure that all aggrieved parties and mediators are familiar with these confidentiality provisions.

V. PROCEDURES

The procedures for electing either mediation or the traditional EEO counseling process are outlined below. These procedures also apply where mediation is elected after a formal written EEO complaint has been filed.

A. As set forth in the EEO Instruction, when an aggrieved person timely contacts an EEO Counselor alleging specific grounds for believing that unlawful discrimination has occurred, the EEO Counselor will inform the aggrieved person of the ADR option and provide him/her with a copy of the ADR program. If deemed necessary, the aggrieved person may contact the EEO Director for further explanations concerning how ADR works generally.

B. The EEO Counselor will also advise the aggrieved person of his or her rights and responsibilities in the EEO process, as set forth in 29 C.F.R. § 1614.105(b).

C. The initial contact with the EEO Counselor will start the time limits provided in EEOC's regulations for informal counseling. If the person elects to use ADR instead of counseling, the 30 day informal counseling period shall be extended to 90 days.

D. If the aggrieved person chooses to use ADR, he or she must fill out the ADR Request Form(Form A).

E. The EEO Counselor will contact the EEO Director for assistance in obtaining names of mediators) within 5 working days of the notification that ADR has been chosen by the aggrieved person. Mediators must be mutually agreeable to the aggrieved person and the appropriate management official(s). Mediators will come from the following sources: (1) the Federal Sharing Neutrals Program, and (2) the private sector. All mediators must meet minimum training and qualification requirements as defined in the EEOC Management Directive.

F. In addition to notifying the EEO Director of the selection, if the aggrieved person is a bargaining unit employee or an applicant for a bargaining unit position, the EEO counselor will send notice to the UAE President and the appropriate management official for that component. This is a notification to the UAE of any potential discussions which could affect the working conditions of bargaining unit employees. The notice will indicate whether the aggrieved person is a current or former FLRA employee, or an applicant for employment in a unit position, but will not identify the aggrieved person by name.

G. The EEO Director will coordinate the mediation effort, having primary responsibility for logistical arrangements. The EEO Director is responsible for the overall management of the ADR program. He or she develops and maintains trained staff to implement the ADR program and ensures that the ADR program is in compliance with applicable EEOC and OPM regulations. The EEO Director arranges for mediators and manages, implements and evaluates the ADR process.

H. The mediation process will commence by the mediator contacting the aggrieved person (and representative, if any) and the appropriate management official to schedule the mediation session. When the parties to the dispute convene, they will sign an Agreement to Mediate (Form B). By signing the agreement, the parties indicate that they understand the mediation process and the conditions and procedures of participation. After electing to participate in the mediation process, the aggrieved person may opt out of the process at any time.

I. The UAE will be given notice and an opportunity to attend any mediation session involving an EEO dispute where, consistent with FLRA precedent, such session constitutes a formal discussion between one or more representatives of the FLRA and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment. The UAE representative's participation ordinarily will be minimal, as the role of such representative is to monitor potential effects on the working conditions of the aggrieved person and bargaining unit employees.

J. If mediation successfully resolves the EEO dispute, the parties will execute a Mediation Agreement describing the resolution of the dispute (Form C). The mediator will notify the EEO counselor that the dispute has been resolved so that the counselor can close the case. An aggrieved person cannot file an EEO complaint concerning anything said or done during attempts to resolve the dispute through ADR, including the agency's failure to provide a neutral. Allegations by an aggrieved person that the FLRA has not complied with the terms of the Mediation Agreement shall be handled in accordance with 29 C.F.R. § 1614.504, beginning with the aggrieved person's notice to the EEO Director, in writing, of the alleged non-compliance within 30 days.

K. If mediation in the informal stage is unsuccessful, the mediator will report the outcome (without specifics) to the EEO Director and will indicate on the Mediator Reporting Form (Form D) that no resolution was reached. The EEO Director will then contact the EEO Counselor of record and ask him/her to prepare the Notice of Final Interview/Right to File a Formal Discrimination Complaint and the EEO Counselor's Report as referred to in the FLRA EEO Instruction. The latter Report will specify the aggrieved person's alleged grounds of discrimination, and will reflect that the aggrieved person was offered and accepted ADR in lieu of counseling but that such efforts at informal resolution were unsuccessful.

L. The EEO Counselor will provide the aggrieved person with two copies of the Counselor's report, the Notice of Final Interview, the Notice of Right to File a Formal Discrimination Complaint and the Complaint Form. The EEO counselor will advise the aggrieved person that if he or she elects to file a complaint of discrimination on any of the grounds previously raised, it must be filed within 15 calendar days of receipt of the Notice of Right to File a Discrimination Complaint.

M. If the aggrieved person has opted for EEO counseling rather than ADR mediation during the informal stage of the EEO process, he or she still may choose to invoke mediation after a formal written EEO complaint has been timely filed (see paragraph L) by so notifying the EEO Director in writing. The same procedures governing ADR at the informal stage also apply after a formal EEO complaint has been filed, except that if mediation is successful, the EEO Director upon being so notified will take the necessary steps to close the case by advising the EEO investigator, the EEOC, and/or the FLRA representative responsible for preparing a final agency determination, as appropriate. If mediation of the formal complaint is unsuccessful, the complaint must be processed within the applicable time period as extended by the 90 days during which ADR procedures were in effect.

VI. IMPLEMENTATION

The ADR program will be implemented and training will be conducted through a variety of methods designed to involve employees and inform them about mediation as an alternative to EEO counseling and as an adjunct to the processing of formal complaints.

A. Awareness Education

The ADR program for mediating EEO disputes will be explained to all FLRA management and employees in the following manner:

1. A memorandum signed by the FLRA Chairman, the General Counsel, the Chair of the Federal Service Impasses Panel, and the UAE President will be sent to all employees describing the ADR mediation process as an alternative to traditional EEO counseling and/or formal EEO litigation;
2. An e-mail announcement will be sent to all employees when the program begins; and
3. Detailed information concerning the ADR program, including a copy of the program, will be placed on the FLRA's Home Page.

B. Training

Training about ADR, mediation, and the EEO process will be a vital factor in the successful implementation of the program at the FLRA. Employees need detailed information about the two alternatives (counseling or ADR available at the informal stage). Participants in mediation need to know what to expect and the roles of the parties. The FLRA's full support for the ADR process should be communicated.

The EEO Director will provide a briefing (approximately 30 minutes) about the ADR program to all staff during the first 3 months of the program. In addition, a portion of the New Employee Orientation will include a description of this program.

VII. EVALUATION

A. Data Requirements

Management and union representatives will evaluate the program and how it is functioning on an annual basis. The following statistical data will be used:

1. The total number of EEO cases filed;
2. The number of disputes referred to ADR, the stage of referral (informal or formal), and the number of those referred which were resolved;
3. The parties' level of satisfaction with the ADR process, and the reasons for satisfaction or dissatisfaction (Participant's Comments Form - Form E);
4. The amount of time spent attempting to resolve the dispute using the ADR process; and
5. The estimate of cost savings, showing the criteria used to calculate such cost savings.

B. Data Gathering

The ADR program will be evaluated by using the following questionnaires: Mediator's Reporting Form (Form D) and Participants' Comments (Form E). The distribution of evaluation questionnaires and the gathering of information will be the responsibility of the EEO Director or his/her designee. The EEO Director will have the responsibility of summarizing the information to be evaluated and will develop an annual report on the status and/or accomplishments of the ADR program. These summary reports will be shared with the FLRA Chairman, the Chair of the Federal Service Impasses Panel, the General Counsel, and the UAE President. As the ADR program evolves, the evaluation concepts along with the measurement tools may be refined or modified after negotiation with the UAE.

Note: All forms referenced throughout this document are available in a Form Book to be distributed to all EEO counselors and staff administering this ADR program. Employees who would like copies can see the Human Resources staff or the EEO Director.

Form A

FEDERAL LABOR RELATIONS AUTHORITY

ALTERNATIVE DISPUTE RESOLUTION REQUEST/REFERRAL

Case #:

1. Date of Request/Referral:
 2. Name of Requester:
 3. Organization of Requester:
 4. Telephone # of Requester:
 5. Briefly summarize the dispute which you wish to resolve:
-
6. Note other parties to this dispute (these may be referenced in #5 above. Please provide name and telephone number if possible).
-
7. I understand that Alternative Dispute Resolution is a joint effort between the parties to facilitate an expedited resolution of disputes involving them.

I understand that the pre-complaint processing period shall be extended to 90 days for the purposes of resolving the dispute through the ADR process.

I understand that my right to continue with the administrative complaints process will remain intact and available to me should an agreement not be reached using ADR, provided I have timely filed a formal complaint.

I understand that I have the right to representation (attorney or other person of my choice) throughout this process.

Signature of ADR Requester

Date of Request

Form B

AGREEMENT TO MEDIATE

The parties agree to engage in mediation to attempt resolution of issues pertaining to the dispute of alleged employment discrimination. The parties understand that mediation is voluntary and may be ended by the requester at any time.

The parties understand that the mediator(s) has/have no authority to decide the case and is/are not acting as advocates) or attorneys) for any party.

Mediation is a confidential process. Any documents submitted to the mediator(s) and any statements made during the mediation are for settlement purposes only. The parties agree not to subpoena the mediator(s) or any documents prepared by or submitted to the mediator(s). In no event will the mediator(s) voluntarily testify for any party or submit any type of report concerning this mediation. Confidentiality will not extend to threats of imminent physical harm.

No party is bound by anything said or done at the mediation unless a written agreement is reached and executed by the parties and/or their representatives. If an agreement is reached, it will be reduced to writing and, when signed and approved by the parties and/or their representatives, will be binding upon them.

By signature below, we acknowledge that we have read, understand, and agree to this mediation process.

Aggrieved person

Date

Management/Settlement Official

Date

Mediator(s)

Date

Form C

MEDIATION AGREEMENT

Memorandum of agreement in the complaint(s) of (name), Case Numbers(s) if applicable

_____.

The Aggrieved person, (name), and the Federal Labor Relations Authority (FLRA), the parties to this agreement, hereby agree and stipulate as follows:

TERMS OF AGREEMENT

1. The FLRA (name of Center/Division/Office)

_____ agrees

to _____

2. The Aggrieved person name agrees to withdraw or dismiss with prejudice all informal/formal complaints of illegal discrimination related to and including the complaint(s) identified above which he/she has filed against the FLRA.

The Aggrieved person represents that no other action or suit with respect to the matters encompassed by the complaint referenced herein or to related matters occurring at any time up to and including the effective date of this agreement has been or will be filed in or submitted to any court, administrative agency, or legislative body. If any other related complaint was filed prior to the effective date of this agreement, (name) _____ agrees that it too is covered by the terms of this agreement and, by signing this agreement, withdraws and dismisses each with prejudice.

This agreement is not intended as, and will not be construed by either party to constitute, an admission or statement by either party as to the validity of any legal position or factual contention advanced in the above referenced complaint(s). Nor does it indicate in any way the views of either party as to the substantive merits of the complaint(s).

Issues related to compliance under this agreement shall be resolved in accordance with 29 C.F.R. § 1614.504.

This agreement shall become effective as of the date the last signature is obtained below. This settlement agreement constitutes the entire agreement between the aggrieved person and FLRA, and there are no other representations or obligations except for those enumerated herein. The parties agree that the terms of this agreement constitute a full and complete satisfaction and settlement of all claims which the aggrieved person may have against the FLRA, its officers, agents or employees which are encompassed by or arise out of the instant complaint(s).

The aggrieved person acknowledges that he/she clearly and fully understands the terms and conditions of this agreement and fully agrees to its terms. Further, the aggrieved person acknowledges having voluntarily entered into this agreement.

Aggrieved person

Date

Name of Management/Settlement
Official

Date

Form D

FLRA

ADR MEDIATOR REPORTING FORM

INSTRUCTIONS: This form is to be completed immediately upon closing of your case. Please return the form to the EEO Director.

- 1. Mediator's Name:
- 2. Office Telephone Number:
- 3. ADR Case Number:
- 4. Date of Sessions and Time Spent:

- | | |
|----|----|
| 1. | 5. |
| 2. | |
| 3. | |
| 4. | |

5. If either party had a representative in attendance please indicate which party did so:

A. Employee

B. Manager or 2nd Party

1. _____ Attorney

1. _____ Attorney

2. _____ Other

2. _____ Other

6. OUTCOME:

_____ Not Settled

_____ Settled prior meeting

_____ Settled, agreement
signed

_____ Partial settlement

7. GENERAL: In the preparation process, it was determined that ADR was appropriate to address this dispute. In your opinion was it appropriate in this case?

1. Yes/No
2. Why or why not?

8. Other comments or suggestions:

Signature

Date

Form E

FLRA

PARTICIPANT'S COMMENTS - ADR

To assist in improving the ADR process, please take a few minutes to answer the questions below. Send your completed survey to the EEO Director at FLRA, 607 14th Street, NW, Washington, D.C. 20424-0001. All personal information will be kept confidential.

Please circle the letter which best reflects how you feel about each of the following statements:

- 1- Strongly Agree** **2- Somewhat Agree** **3-No opinion**
4- Somewhat Disagree **5- Strongly Disagree**

1. The Mediator explained the ADR program clearly so that I knew what to expect during the ADR process. 1 2 3 4 5

2. The Mediator allowed me and/or my representative to fully present my case.
1 2 3 4 5

3. The Mediator carefully listened to my side of the case.
1 2 3 4 5

4. The Mediator treated all parties fairly.
1 2 3 4 5

5. The Mediator asked appropriate questions.
1 2 3 4 5

6. The Mediator helped facilitate realistic options for settling the dispute.
1 2 3 4 5

7. Did you reach an agreement and settle your case?

Yes/No

8. Did the ADR process help you understand the other party's/parties' concerns? Yes/No

9. Did you feel that the process helped the other party or parties understand your concerns?

10. If you ever have a similar dispute again, would you:

Circle the letter below that indicates your response.

A = Talk to the other party first.

B = Ask for ADR intervention.

C = Use the standard complaint processes available to you.

11. How satisfied are you overall with the ADR process?

12. Please provide any comments you wish to make regarding the process in the space below:

Signature (Optional)

Date

Attachment 2(b)



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
1400 K STREET N.W. • WASHINGTON, D.C. 20424

OFFICE OF THE CHAIRMAN

EEO PROGRAM POLICY STATEMENT

The purpose of this statement is to reaffirm the Federal Labor Relations Authority's (FLRA's) commitment that equal employment opportunity (EEO) will be available to all employees and applicants without regard to race, color, religion, sex, national origin, age, disability, genetic information, marital status, sexual orientation, or political affiliation. The FLRA's commitment to EEO extends to all employment programs, practices, and decisions, including, but not limited to, those affecting: recruitment and hiring, promotion, transfers and reassignment, training and career development, employment benefits, discipline, and separation.

In keeping with its commitment to EEO, it is the FLRA's policy to prohibit discrimination in employment that is based on race, color, religion, sex, national origin, age, disability, genetic information, marital status, sexual orientation, or political affiliation. Further, it is the FLRA's policy that, in employment matters, all employees and applicants will have the opportunity to compete on a fair and equal basis without regard to race, color, religion, sex, national origin, age, disability, genetic information, marital status, sexual orientation, or political affiliation.

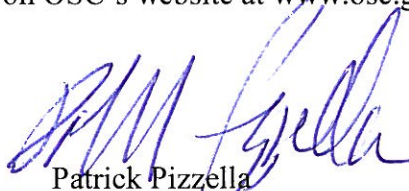
The FLRA assures you that managers at all levels share both this commitment to upholding EEO within the agency and the responsibility for enforcing EEO-program requirements.

In the interest of preventing employment discrimination, the FLRA will not tolerate workplace harassment. The FLRA will promptly investigate allegations of such harassment and, where substantiated, will take appropriate action.

All employees and applicants are free to exercise their rights under the statutes that provide for EEO and prohibit employment discrimination in federal employment. The FLRA will not tolerate reprisal against anyone for having engaged in activity protected by those statutes.

The FLRA will process complaints of discrimination based on race, color, religion, sex, national origin, age, disability, genetic information, or reprisal for protected activity in accordance with the FLRA's discrimination-complaints procedures. Those procedures are set forth in FLRA Instruction 3700.1B, which is available on the FLRA's intranet site. You may also obtain information regarding these procedures from the FLRA's Director, EEO Complaints, Gina K. Grippando ((202) 218-7776).

You should pursue complaints of discrimination based on marital status, sexual orientation, or political affiliation through the complaint process administered by the U.S. Office of Special Counsel (OSC). You can find information regarding this process on OSC's website at www.osc.gov.


Patrick Pizzella
Acting Chairman

February 21, 2017

Attachment 2(c)



NO FEAR ACT NOTICE

On May 15, 2002, Congress enacted the “Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,” which is now known as the No FEAR Act. One purpose of the Act is to “require that Federal agencies be accountable for violations of antidiscrimination and whistleblower laws.” Public Law 107-174, Summary. In support of this purpose, Congress found that “agencies cannot be run effectively if those agencies practice or tolerate discrimination.” Public Law 107-174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

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. 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 your 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, D.C. 20036-4505 or online through the OSC Website <http://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.

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 further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within your agency (e.g., EEO/civil rights office, human resources office or legal office). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC website <http://www.eeoc.gov> and the OSC Website at <http://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).

Upcoming Events

[The Ins & Outs of Bargaining Unit Status - Statutory Exclusions](#)

Ralph H. Metcalfe Federal Building

April 4, 2018

Status: Open

[Basic Statutory Training](#)

Atlanta, GA

April 17, 2018

Status: Open

[Advanced Statutory Training](#)

Atlanta, GA

April 18, 2018

Status: Open

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Attachment 2(d)



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
1400 K STREET N.W. • WASHINGTON, D.C. 20424

OFFICE OF THE CHAIRMAN

ANTI-HARASSMENT POLICY

The equal employment opportunity (EEO) laws that apply to federal-sector employment – Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Rehabilitation Act, and the Genetic Information Nondiscrimination Act – prohibit employment discrimination based on race, color, sex, religion, national origin, age, disability, and genetic information. These EEO laws also prohibit retaliation for EEO activity. In addition, the prohibited-personnel-practices provisions in 5 U.S.C. § 2302 prohibit employment discrimination based on marital status, political affiliation, and conduct that does not adversely affect the performance of an employee or the performance of others. And Executive Order 13,087 prohibits discrimination based on sexual orientation.

In furtherance of the objective of preventing employment discrimination, it is the Federal Labor Relations Authority's (FLRA's) policy to maintain a work environment that is free from harassing conduct. Consistent with this policy, the FLRA will not tolerate harassing conduct by anyone in the workplace. In addition, harassment of anyone on a basis that is protected from discrimination by EEO laws may violate law and may subject the Agency and/or the individual harasser to liability for any such unlawful conduct. Harassment can be sexual or non-sexual in nature. Harassment is defined as any unwelcome verbal or physical conduct based on any characteristic protected by law when:

The conduct can reasonably be considered to adversely affect the work environment; or
an employment decision affecting the employee is based on the employee's acceptance or rejection of such conduct.

Forms of harassment include, but are not limited to:

1. **Verbal:** derogatory, provocative, insulting, threatening, or suggestive statements, innuendoes, epithets, slurs, jokes, or sounds;
2. **Visual/Non-verbal:** derogatory posters, cartoons, or drawings; suggestive objects or pictures; graphic commentaries; leering; or obscene gestures;
3. **Physical:** unwanted physical contact, including touching; interference with an individual's normal work movement; or assault; and
4. **Other:** engaging in or threatening reprisal as a result of a negative response to harassment.

In addition, sexual harassment includes unwelcome sexual advances, requests for sexual favors, or any other visual, verbal, or physical conduct of a sexual nature when:

1. Submission to the conduct is made, either implicitly or explicitly, a condition of the individual's employment;

2. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the harassed employee; or
3. The harassment has the purpose or effect of unreasonably interfering with the employee's work performance or creating an environment that is intimidating, hostile, or offensive to the employee.

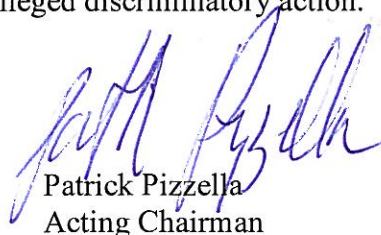
Not all harassment amounts to a violation of the EEO laws. Generally, harassment must be severe or pervasive to constitute a violation of law. But, in the interest of stopping harassment before it becomes a violation of the EEO laws, the FLRA prohibits not only unlawful harassment but all harassing conduct. Accordingly, the FLRA will not tolerate derogatory, insensitive, abusive, or otherwise inappropriate behavior that is based on personal characteristics protected by anti-discrimination laws regardless of whether it is of a nature or degree that would violate law.

Each employee must exercise his or her own good judgment to avoid engaging in conduct that may be perceived by others as harassment. Any employee who believes that s/he is subjected to harassment should report it immediately to a supervisor or management official, an EEO Counselor, the Human Resources Division, or the Inspector General. Failure to report such conduct in a timely manner and failure to afford the FLRA the opportunity to take corrective action may jeopardize any claim that the FLRA is responsible for the objectionable conduct.

No FLRA employee is exempt from this policy. Therefore, no one should allow an inappropriate situation to continue by not reporting it, regardless of who is creating that situation.

In response to every claim reported, the FLRA will conduct a prompt, thorough, and impartial investigation and take appropriate corrective and preventative action(s) to include, if warranted, discipline against anyone engaging in harassment. To the extent possible, the FLRA will protect the confidentiality of anyone who brings a claim of harassment or provides information regarding such claims. The FLRA will not retaliate in any way against employees who make harassment claims and/or participate in investigations regarding such claims.

The process outlined above is separate from, and in addition to, the EEO-complaint process and other proceedings available for addressing allegations of employment discrimination. Using the process described in this policy to report a claim of harassment does *not* satisfy any requirement for filing an EEO complaint or delay the time limits for initiating an EEO complaint. If you wish to pursue an EEO complaint alleging workplace harassment based on race, color, sex, religion, national origin, age, disability, or genetic information that violates law, then you must do so separately by filing an EEO complaint. To file an EEO complaint, you must contact an EEO Counselor within 45 days from the date of the alleged discriminatory action, the effective date of a personnel action alleged to be discriminatory, or the date the person knew, or reasonably should have known, of the alleged discriminatory action.



Patrick Pizzella
Acting Chairman

February 21, 2017

Attachment 2(e)

**FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE EXECUTIVE DIRECTOR
WASHINGTON, D.C.**

INSTRUCTIONS

FLRA 3752

**SUBJECT: EMPLOYEE DISCIPLINE AND ADVERSE
ACTIONS**

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DISTRIBUTION: FLRA

OPI: HRD

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CHAPTER I. GENERAL

- A. **Purpose.** This Instruction sets forth the FLRA's policy and processes for dealing with employee misconduct and/or poor performance, and for furloughing employees for 30 days or less because of lack of work or funds.
- B. **Cancellation.** This Instruction supersedes FLRA Instructions No. 3810.1, Employee Discipline, dated February 13, 1986, and No. 3830.1, Adverse and Performance Based Actions, dated February 19, 1986.
- C. **Scope.**
1. The formal disciplinary and adverse actions described in this Instruction provide the tools and procedures for managers to apply in administering employee discipline. Employees who are covered by Chapters II and III of this Instruction generally fit into two categories:
 - (a) Those who commit serious or repeated acts of misconduct that are unacceptable in the work place and that would cause a loss of efficiency if allowed to continue; and
 - (b) Those who fail to meet performance expectations. (Note: Procedures set forth in this Instruction are optional for performance-based problems. 5 CFR 432 procedures established specifically for performance-based actions are set forth in FLRA Instruction 3430.2A)
 2. Actions covered by this Instruction include:
 - (a) Reprimands;
 - (b) Suspensions;
 - (c) Reductions in grade or pay;
 - (d) Furloughs of 30 days or less; and
 - (e) Removals.
 3. This Instruction does not apply to:
 - (a) Suspensions for National Security under 5 U.S.C. 7532;

- (b) Reductions-in-Force under 5 U.S.C. 3502;
- (c) Reduction in grade back to the grade previously held of a new manager or supervisor who fails to successfully complete the one-year probationary period under 5 U.S.C. 3321(a)(2);
- (d) An action initiated by the Office of the Special Counsel under 5 U.S.C. 1215 or actions against Administrative Law Judges under 5 U.S.C. 7521; and
- (e) Removal during a probationary or trial period, or during a temporary or time-limited appointment.

D. **Applicability.** This Instruction applies to all FLRA employees in excepted and competitive General Schedule positions. It does not apply to employees serving under a temporary or time-limited appointment. With the exception of Chapter 4, Furloughs of 30 Days or Less, it does not apply to those who are in a probationary or trial period. For employees in the bargaining unit, if any part of this Instruction is in conflict with the collective bargaining agreement, the agreement applies.

E. **Policy.** The Agency's policy is that:

1. Supervisors will timely identify and take appropriate action to notify employees of conduct and/or performance problems in order to correct the problem using informal processes such as counseling, training, and closer supervision.
2. If good faith efforts to resolve the problem informally fail, or if the problem is so severe that informal resolution is impractical, supervisors will apply discipline consistently and appropriate to the situation.
3. FLRA will attempt other means of avoiding costs in times of temporary budget shortfalls or mission lags so that furloughing employees is a last resort to accommodate the temporary deficit.

F. **References.**

1. Title 5 United States Code (U.S.C.) Chapter 75, Adverse Actions;
2. Title 5 Code of Federal Regulations (CFR) Part 752, Adverse Actions;
3. FLRA Instruction No. 3771, Administrative Grievance System;

4. FLRA/UAE Collective Bargaining Agreement;
5. FLRA Instruction No. 3430.2A, dated August 19, 1998, General Schedule Performance Management Plan; and
6. FLRA Instruction 3431.2, dated October 1, 1996, Performance Management for the Senior Executive Service.

G. Definitions.

1. Adverse action refers to suspensions for more than 14 days, reductions in grade or pay, furloughs for 30 days or less, and removals.
2. Current continuous employment means a period of employment immediately preceding a suspension action in the same or similar position without a break in Federal civilian employment of a workday.
3. Day means calendar day.
4. Disciplinary action refers to reprimands and suspensions of 14 days or less.
5. Employee, for purposes of Chapters 2 and 3, means:
 - a. An individual in the competitive service who:
 - (1) is not serving a probationary or trial period under an initial appointment; and
 - (2) has completed one year or current continuous employment under other than a temporary appointment limited to one year or less.
 - b. A preference eligible in the excepted service who has completed one year of current, continuous employment in the same or similar positions.
 - c. An individual in the excepted service other than a preference eligible who:
 - (1) is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or
 - (2) has completed two years of current continuous service in the same or similar positions on other than a temporary appointment limited to two years or less.

6. Furlough means placing an employee in a temporary status without duties or pay because of lack of work or funds or other non-disciplinary reason.
7. Grade means a level of classification under a position classification system.
8. Indefinite suspension means the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or other agency action. The indefinite suspension continues to an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.
9. Pay means the rate of basic pay that is fixed by law or administrative action for the position held by the employee.
10. Preference eligible means veterans, spouses, widows, or mothers who meet the definition of “preference eligible” in 5 U.S.C. 2108. Preference eligibles are entitled to have 5 or 10 points added to their earned scores on a civil service examination, and are accorded a higher retention standing in reduction-in-force. Preference does not apply to in-service placement actions such as promotions.
11. Reprimand is a formal memorandum -- the least severe form of formal discipline for a first or relatively minor offense -- that remains in the employee’s Official Personnel Folder (OPF) for an established period of at least one, but no more than three, years. Reprimands may be expunged before their expiration dates if the appropriate supervisor determines they should be expunged or the employee leaves the FLRA, whichever comes first.
12. Suspension means placing the employee, for disciplinary reasons, in a temporary status without duties and pay.

CHAPTER II. DISCIPLINARY ACTIONS:
REPRIMANDS AND SUSPENSIONS OF 14 DAYS OR LESS

- A. **Standard for Action.** FLRA may reprimand an employee or suspend an employee for 14 days or less under this Chapter only for such cause as will promote the efficiency of the service.
- B. **Procedures.**
 1. Supervisory responsibilities before taking action.
 - a. In cases of employee misconduct or poor performance, supervisors should

consider the facts surrounding the circumstances carefully to ensure that formal action is warranted. This can include having a discussion with the employee and the employee's representative, if any.

- b. The supervisor or designated FLRA representative should carefully document in writing the facts surrounding the offense. This documentation may take the form of a written memorandum or other internal document or may be reflected in the written reprimand or notice of proposed action that sets forth the reasons for the proposal.
- c. In choosing the appropriate penalty, the supervisor should consider how he/she has treated similar instances of misconduct and/or poor performance in order to apply discipline consistently. Supervisors also must consider the Douglas Factors that are set forth herein as Appendix A.
- d. If the supervisor, after discussion with the Human Resources Division (HRD), determines that formal action is not required, management should document the occurrence and the reasons for the decision in a memorandum for record. The memorandum is not filed in the employee's OPF, but is retained in a separate agency file in case the problem continues or recurs within a one year period. Copies of the memorandum should be provided to the employee or the employee representative, if the employee designates a representative.
- e. When the supervisor, in close coordination with the HRD, decides that formal discipline is warranted, he or she prepares appropriate notice -- which, for a reprimand, is a notice of reprimand; and, for a suspension from duty without pay for up to fourteen days, is a notice of proposed action.

2. Employee entitlement.

- a. An employee reprimanded under this Chapter is entitled to a written reprimand that provides both specific information regarding the offense that is the basis for the reprimand and the length of time (one to three years) that the reprimand will remain in the employee's OPF.
- b. An employee suspended under this Chapter is entitled to:
 - (1) Notice of the proposed suspension. The written notice shall inform the employee of the nature of the offense in enough detail that the employee can respond to the charges. It informs the employee of the specific duration of the advance notice period, of the proposed suspension, and of his or her right to review the material that is relied upon to support

the reasons for the action given in the notice.

- (2) Representation. An employee whose suspension is proposed is entitled to be represented by an attorney or other representative. FLRA may disallow an employee's representative if the representative's activities would cause a conflict of interest or position, or if release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.
- (3) Employee answer. The employee will be given a reasonable time to answer a proposal of suspension, but not less than 24 hours. The answer may be presented orally, in writing, or both ways, and may include affidavits and other documentary evidence in support of the answer. If an employee makes only an oral response, the FLRA representative to whom the employee responds summarizes the points made by the employee and provide a copy of the summary to the employee or the employee's representative, if the employee designates a representative.
- (4) FLRA decision. The employee will be given a timely written decision. In arriving at its written decision, FLRA may consider only the charges specified in the notice of proposed suspension and will consider any response made by the employee or the employee's representative to the designated FLRA representative. The FLRA decision will be to impose either the proposed penalty, a lesser penalty, or no penalty at all. FLRA will deliver the notice of decision to the employee or the employee's representative, if the employee designates a representative, at or before the time the action is to be effective.

C. **Introduction of Medical Evidence.**

1. If the employee wishes FLRA to consider any medical problem which contributed to the conduct or performance problem, the employee will be given a reasonable time to provide medical documentation in accordance with the applicable provisions of 5 CFR Part 339. Whenever possible, the employee will provide the medical documentation within the time limits allowed for the response to the proposed action.
2. After its review of medical evidence, FLRA is authorized by 5 CFR 339.301 - 304 to offer an agency-sponsored medical examination. In this case, FLRA will name the physician and pay for the costs associated with the examination. If FLRA determines that an agency-sponsored examination is necessary to make an informed decision

regarding the proposed action, FLRA will notify the employee in writing of the reasons for requiring the examination and the consequences if the employee fails to comply.

D. **Employee Right to File a Grievance.** Employees may not grieve a proposed disciplinary action. Employees against whom formal disciplinary action, including a reprimand, is affected may file a grievance. UAE bargaining unit members who are disciplined under this Chapter under circumstances that fall within the scope of the collective bargaining agreement may file a grievance using the procedures set forth in the FLRA/UAE Agreement only. Non-bargaining unit employees must use the FLRA Administrative Grievance Procedure that is set forth in FLRA Instruction No. 3771.

E. **Agency Records .**

1. FLRA will maintain copies of the written summary of the investigation of misconduct, if any, or instances of poor performance; the notice of proposed action; the summary of the employee's oral response and/or the employee's written response; the notice of decision; and any other material documenting the action in an Agency disciplinary action file maintained in the HRD.
2. Reprimands will state the duration (from one to three years) in which the reprimand will remain a part of the Employee's Official Personnel Folder (OPF). Reprimands are temporary documents and, as such, are filed on the left side of the OPF. Reprimands must be removed from the OPF at the expiration date, at the time the employee leaves FLRA, if the supervisor decides before the scheduled expiration date that the record should be expunged, or if the reprimand is canceled due to an employee grievance or complaint.
3. Suspensions are documented by Standard Forms (SFs) 50, which are permanent records filed on the right side of the employee's OPF. Suspension SFs 50 are removed from the OPF only if the action is canceled or the suspension is mitigated due to an employee grievance or complaint.

CHAPTER III. ADVERSE ACTIONS: REMOVAL, REDUCTION IN GRADE, PAY, AND SUSPENSION FOR MORE THAN 14 DAYS

A. **Standard for Action.** FLRA may remove an employee from Federal service, reduce an employee in grade and/or pay, or suspend the employee for more than 14 days for misconduct or poor performance under this Chapter only for such cause as will promote the efficiency of the service.

B. Procedures.

1. Supervisory responsibilities before taking action.
 - a. In cases of employee misconduct or poor performance, supervisors must gather and consider the facts surrounding the circumstances carefully to ensure that formal action is warranted.
 - b. The supervisor or designated FLRA representative must carefully document in writing the facts surrounding the offense or the instances of poor performance. This documentation may take the form of a memorandum or other internal document, or a letter of proposed action that sets forth the reasons supporting the proposal.
 - c. In choosing the appropriate penalty, the supervisor should consider how he/she has treated similar instances of misconduct and/or poor performance in order to apply discipline consistently. Supervisors also must consider the Douglas Factors that are set forth herein as Appendix A.
 - d. Supervisors should coordinate with the HRD to determine if this Instruction provides the appropriate processes for taking action on a performance problem. Examples of reasons that a supervisor would choose this process include: a situation that involves both poor performance and misconduct, and a situation in which the supervisor wishes to use a history of performance problems that extend back beyond one year. If a supervisor takes a performance-based action under this Chapter, the supervisor must consider whether the employee has had appropriate notice of performance deficiencies and a reasonable opportunity to improve the deficiencies before he/she proposes an adverse action. As mentioned in the example above, and different from performance-based actions taken under 5 CFR 432, management can consider performance deficiencies that occurred further back than one year from the notice period. Although a supervisor is not required to provide a formal opportunity period to improve performance under this Chapter, he or she must be prepared to prove that the employee had appropriate notice and to justify the action before a third party under the higher “preponderance” standard of evidence rather than the “substantial” standard applied to actions taken under 5 CFR 432.
 - e. If the supervisor, in discussion with the HRD, determines that formal action is not required, management should document the occurrence and the reasons for the decision in a memorandum for record. The memorandum is not filed in the employee’s OPF, but is retained in a separate agency file in case the problem

continues or recurs. Copies of the memorandum should be provided to the employee or the employee's representative.

- f. When the supervisor, in close coordination with the HRD, decides that adverse action is warranted, he or she prepares a notice of proposed action.

2. Employee entitlement.

- a. Notice of proposed action. The employee against whom an adverse action is being considered has the right to a written notice of proposed action at least 30 days before the action will be effected. The notice will explain the offense in enough detail that the employee can respond to the charges. It also advises the employee of the specific action being proposed and of the employee's and his or her representative's right to review the material and records relied upon to propose the action. FLRA may not use material that cannot be disclosed to the employee, his or her representative, or his or her designated physician under the Privacy Act.
- b. Representation. An employee covered by this Chapter is entitled to be represented by an attorney or other representative. FLRA may disallow an employee's representative only if the representative's activities might cause a conflict of interest or position or whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.
- c. Employee answer.
 - (1) FLRA will give the employee, and the employee representative, if any, a reasonable amount of official time, to extend over not less than seven days, to review the material relied upon to support its proposal and to prepare an answer and to secure affidavits, if the employee is otherwise in a duty status.
 - (2) The employee may make an oral response, provide a written response, or respond in both ways to a designated FLRA official. The employee may provide affidavits or other documentary evidence to support the answer.
 - (3) FLRA will designate an official to hear the employee's oral response who has the authority either to make or recommend a final decision on the adverse action. If an employee makes only an oral response, the FLRA representative to whom the employee responds should

summarize and document the points made by the employee for the record and provide a copy of the summary to the employee or the employee's representative, if the employee designates a representative.

- d. **FLRA decision.** In arriving at its decision, FLRA must consider only the reasons for the action set forth in the notice of proposed action. It must also consider any information provided by the employee and the employee's representative, if any, in response to the charges. The decision must be to impose either the proposed penalty, a lesser penalty, or no penalty at all. FLRA will deliver the notice of decision to the employee at or before the time that the action will be effected and advise the employee of his or her grievance or appeal rights.

C. **Employee Status During Notice Period.** Under ordinary circumstances, an employee, whose removal, reduction in grade and/or pay, or suspension, including indefinite suspension has been proposed, will remain in a duty status in his or her regular position during the advance notice period. If management concludes that the employee's presence in his/her position of record may be detrimental to the employee or unduly disruptive to coworkers, management may detail the employee to another position during the notice period. In those rare circumstances in which the FLRA determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the FLRA may elect either one or a combination of the following alternatives:

1. Assigning the employee to duties where he or she is no longer a threat to safety, the FLRA mission, or Government property;
2. Allowing the employee to take leave or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absent without leave if the employee has absented himself from the workplace without requesting leave);
3. Curtailing the notice period when the FLRA can invoke the "crime" provision of 5 CFR 752.404(d)(1). This provision, which is described below, may be evoked even in the absence of judicial action if the FLRA has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed; or
4. Placing the employee in a paid, non-duty status during the notice or proposed action period.

D. **"Crime" Provision.** In accordance with 5 CFR 752.404(d)(1), FLRA may except the 30 days advance written notice if it has reasonable cause to believe that the employee has

committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension (including an indefinite suspension). If this is the case, FLRA may require the employee to furnish his or her answer to the proposed charges, including affidavits and other documentary evidence, within a time that is reasonable under the circumstances -- but not less than seven days. If the circumstances require the employee to be kept away from the work site, FLRA may place the employee in a non-duty status with pay for the time necessary to effect the action.

E. Introduction of Medical Evidence.

1. If the employee wishes FLRA to consider any medical problem which contributed to the conduct or performance problem, the employee will be given a reasonable time to provide medical documentation in accordance with the applicable provisions of 5 CFR 339. Whenever possible, the employee will provide the medical documentation within the time limits allowed for the response to the proposed action.
2. After its review of medical evidence, FLRA is authorized by 5 CFR 339.301 - 304 to require an agency-sponsored medical examination. In this case, FLRA will name the physician and pay for the costs associated with the examination. If FLRA determines that an agency-sponsored examination is necessary to make an informed decision regarding the proposed action, FLRA will notify the employee in writing of the reasons for requiring the examination and the consequences if the employee fails to comply.
3. If the employee has the requisite years of service under either the Civil Service Retirement System or the Federal Employees Retirement System, FLRA will provide the employee with information regarding disability retirement. In doing so, FLRA will remain aware of its affirmative obligations under the provisions of 19 CFR 1613.704, that require reasonable accommodation of a qualified employee who is disabled.
4. In accordance with 5 CFR 831.501(d), an employee's application for disability retirement will not preclude or delay any other appropriate personnel action. 5 CFR 831.1203 describes the basis under which FLRA will file an application for disability retirement on behalf of the employee.

F. Employee Grievance and Appeal Rights. An employee may not grieve or appeal a proposed action. An employee against whom action is taken under this Chapter is entitled to appeal the action to the Merit Systems Protection Board (MSPB). If the FLRA/UAE collective bargaining agreement includes appealable actions in the scope of the negotiated procedure, a bargaining unit employee may grieve or appeal, but not both.

G. Agency Records.

1. FLRA will maintain copies of the written summary of the investigation, if any; the notice of proposed action; the summary of the employee's oral response, if any; the employee's written response, if any; the notice of decision; and any other material documenting the disciplinary action.
2. Suspensions, reductions in grade and/or pay, and removals are documented on Standard Forms (SFs) 50, which are permanent records filed on the right side of the employee's OPF.

CHAPTER IV. FURLOUGHS FOR 30 DAYS OR LESS

- A. **Standard for Action.** FLRA may take action under this Chapter for reasons of lack of money or work.
- B. **Procedures.** When FLRA decides that it must furlough employees for 30 days or less, it will follow procedures described below:
 1. Notice of proposed furlough.
 - a. Employees are entitled to 30 days advance written notice of a pending furlough of 30 days or less. The notice will include the employee's and the employee representative's, if any, right to review the material relied upon to determine that the furlough is necessary.
 - b. When some but not all employees in a competitive level are being furloughed, the notice of proposal will state the basis for selecting particular employees for furlough, as well as the basis for the furlough.
 - c. The advance written notice and opportunity to answer are not required for furloughs without pay caused by unforeseeable circumstances such as sudden emergencies requiring immediate curtailment of activities or acts of nature.
 2. Representation. An employee covered by this Chapter is entitled to be represented by an attorney or other representative. FLRA may disallow an employee's representative if the representative's activities might cause a conflict of interest or position or whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

3. Employee's answer.
 - a. Except as provided above, FLRA will give the employee a reasonable amount of official time to review the material relied upon to support the proposed furlough and to reply orally, in writing, or both ways.
 - b. FLRA will designate an official to hear the employee's oral response who has the authority either to make or recommend a final decision on the furlough action. If an employee makes only an oral response, the FLRA representative to whom the employee responds must summarize and document the points made by the employee for the record and provide a copy of the summary to the employee and the employee's representative, if any.
4. FLRA decision. In arriving at its decision, FLRA will consider only the reasons for action set forth in the notice of proposed action. It will also consider any information provided by the employee and the employee's representative, if any, in response to the proposed notice. FLRA will deliver the notice of decision to the employee at or before the time that the furlough will be effected and advise the employee of his or her appeal rights.

C. **Employee Appeal Rights.** An employee against whom action is taken under this Chapter is entitled to appeal the action to the MSPB.

D. **Agency Records .**

1. FLRA will maintain copies of the notice of proposed action; the summary of the employee's oral response, if any; the employee's written response, if any; the notice of decision; and any other material documenting the furlough.
2. Furloughs are documented on Standard Forms (SFs) 50, which are permanent records filed on the right side of the employee's OPF.

CHAPTER V. PROGRAM ADMINISTRATION AND EVALUATION

The HRD administers and evaluates these programs and sets forth the policies and procedures set forth in this Instruction. Questions and suggestions for improvements are welcome and should be directed to the HRD.

This Instruction is effective September 2, 1998.

Signed
Solly Thomas, Executive Director

APPENDIX A. Douglas Factors

APPENDIX A. DOUGLAS FACTORS

Douglas Factors are the factors set forth by the Merit Systems Protection Board in its precedent setting case, *Douglas vs Veteran's Administration*, 5 M.S.P.R. 280 (1981). Supervisors must consider Douglas Factors when deciding appropriate penalties for employee misconduct, as follows:

- (1) Nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities;
- (2) Employee's job level and type of employment, including fiduciary roles, contacts with the public, and prominence of the position;
- (3) Employee's past disciplinary record;
- (4) Employee's past work performance, including length of service, ability to get along with fellow workers, ability to do the work, and dependability;
- (5) Affect of the offense on the employee's ability to perform effectively and the supervisor's confidence in the employee;
- (6) Consistency of the penalty with those imposed upon other employees for same or similar offenses;
- (7) Notoriety of the offense and its impact upon the FLRA's reputation;
- (8) Clarity with which the employee was on notice that he or she was violating rules and had been warned about the misconduct or performance;
- (9) Potential for the employee's rehabilitation;
- (10) Mitigating circumstances such as unusual job tensions or sexual harassment; and
- (11) Adequacy and effectiveness of alternative sanctions to deter such future misconduct or poor performance.

Attachment 3



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
1400 K STREET N.W. • WASHINGTON, D.C. 20424-0001

Training Plan
(Rights and Remedies under Federal Antidiscrimination
and Whistleblower-Protection Laws)

(Last updated October 1, 2015; last reviewed March 30, 2018)

Purpose and Background

The Agency developed the following training plan, which it has reviewed and updated as necessary, in response to the requirement in § 201 of the Notification and Federal Employees Antidiscrimination and Retaliation Act of 2002 (NoFEAR Act), 5 U.S.C. §2301 note, that each federal agency provide training to its employees regarding the rights and remedies applicable to them under the Federal Antidiscrimination Laws and Whistleblower Protection Laws. Pursuant to Office of Personnel Management (OPM) regulations implementing the requirements of § 201 of the NoFEAR Act, each federal agency is required to develop a written plan to train all of its employees, including supervisors and managers, regarding those matters. 5 C.F.R. § 724.203.

Scope of Training

The Agency will provide all Agency employees, including supervisors and managers, with training regarding their rights and remedies under Federal Antidiscrimination Laws and Whistleblower Protection Laws.

Instructional Material and Method of Training

The training will be an online, self-paced, computer-based program. Although the course is self-paced, employees will be directed to complete it by the applicable deadlines in OPM's regulations.

Beginning with the FY 2014-2016 bi-annual training cycle, the Agency has used the No FEAR Act eLearning Course from LRP Publications. The course consists of a series of six video vignettes, broken into six segments. Topics covered include: whistleblowing; race, color, and national origin; religion; sex and age; disability and retaliation; and what do you do? After completing the course, employees are able to: identify and interpret the antidiscrimination and whistleblower protection laws; explain the rights and responsibilities of whistleblower protection or antidiscrimination laws; follow the steps for filing a complaint alleging a violation of whistleblower protection or antidiscrimination laws; and understand the equal employment opportunity laws enforced by the EEOC. Upon completion of the training segment, employees must achieve 80%

mastery on a thirteen-question assessment, which assures the employee's comprehension and retention of the material.

Training schedule

The completion date for the initial training was December 17, 2006, and the completion date for subsequent trainings of all employees has been no later than December 17, 2008, and every two years thereafter.

The completion date for new employees is within 90 days after their appointment.

Means of documenting completion of training

Employees are no longer required to submit certificates of completion because the EEO Director has "administrator" access to the online course, and she can see which employees have taken the course and whether they have received a passing score of 80% on the mandatory assessment. The EEO Director prints out these results and maintains them in the EEO and training files.

Periodic review of training plan

The Agency will continue to review this policy periodically, and update it as necessary.