



**SUBJECT:** Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020

1. **PURPOSE.** This issuance establishes the Department of the Treasury's policy under the Elijah E. Cummings Federal Employee Antidiscrimination (CFEA) Act of 2020 to increase accountability in the enforcement of the federal antidiscrimination laws.

This document supplements, but does not replace, existing equal employment opportunity (EEO) complaint procedures under 29 CFR Part 1614.

2. **SCOPE.** This issuance applies to all bureaus, offices, and organizations in the Department, including the Offices of Inspectors General within the Department. The provisions of this issuance shall not be construed to interfere with or impede the authorities or independence of the Office of the Inspectors General.
3. **EFFECTIVE DATE.** This policy is effective with the date of signature.
4. **AUTHORITIES.**
  - a. Treasury Directive 12-41, Delegation of Authority Concerning Equal Employment Opportunity (EEO) Programs.
  - b. Treasury Order 102-02, Delegation of Authority Concerning Equal Opportunity Programs.
5. **REFERENCES.**
  - a. Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 contained in Sec. 1131-1138 of the National Defense Authorization Act of 2021, Public Law (P.L.) 116-283.
  - b. Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 contained in 5 U.S.C. 2301 – Merit System Principles, P.L. 107-174.
  - c. 5 U.S. Code (USC) § 7512, Actions Covered.
  - d. 5 USC § 1214 (f), Investigation of Prohibited Personnel Practices; Correction Action.
  - e. 5 USC § 1215. Disciplinary Action.
  - f. 29 C.F.R. Part 1604.11, Federal Sector Equal Employment Opportunity.
6. **POLICY.** It is the policy of the Department to comply with all requirements of the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002, including the CFEA Act, to strengthen Federal antidiscrimination laws enforced by the Equal Employment Opportunity Commission (EEOC) and expand accountability within Treasury's bureaus.
7. **RESPONSIBILITIES.**
  - a. The Office of Civil Rights and Equal Employment Opportunity (OCRE) shall:
    - 1) Within the Department's EEO complaint system, track each discrimination complaint made under 5 USC 2302 (b)(1) and adjudicated through the EEO process, including

whether a decision has been made regarding disciplinary action resulting from any finding of discrimination.

- 2) Within 120 days of the agency's final action or the agency's receipt of an EEOC final decision involving a discrimination finding, submit a disciplinary action report to the EEOC. The report shall state (i) whether disciplinary action has been proposed against an employee who has committed a discriminatory act; and (ii) the reasons for any proposed disciplinary action. If disciplinary action is not proposed, the report shall state the reason(s) for the decision not to impose disciplinary action.
- 3) Within 90 days of being notified that all appeals of a final agency action and all appeals of a final EEOC decision are exhausted, or a court of jurisdiction issues a final judgment involving a finding of discrimination or retaliation, post a notice of the decision on its public internet website, in a clear and prominent location called **"Public Posting Notice of Finding of Discrimination"** linked directly from Treasury's home page of the website to the Department's No FEAR Act internet website page.
  - a) The posting should only be made after coordinating with the Office of General Counsel to ensure all appeals have been exhausted and must remain posted for one (1) year from the dated the notice was posted.
  - b) The posting must state that a discrimination finding was made, the date the finding was made, the date on which each discriminatory act occurred, and the law violated by each discriminatory act; and "advise Federal employees of the rights and protections available under the provision of law covered by paragraphs (1) and (2) of section 201(a)."
- 4) Track and add the following information to the No FEAR data posted on the Treasury's internet website:
  - a) When there is a finding of discrimination: date of the finding, the affected bureau, the law violated, and whether a decision has been made regarding disciplinary action as a result of the finding.
  - b) When there has been a class action complaint filed against Treasury alleging discrimination (including retaliation): "A information regarding the date on which each complaint was filed, [B] a general summary of the allegations alleged in the complaint, [C]an estimate of the total number of plaintiffs joined in the complaint, if known, [D] the current status of the complaint, including whether the class has been certified, and [E] the case numbers for the civil actions (if any) in which discrimination (including retaliation) has been found."

b. Each Bureau shall:

- 1) Establish and maintain a model equal employment opportunity (EEO) program that is not under the control of the bureaus' Human Capital/Resources or legal offices.
- 2) Maintain EEO programs that are devoid of internal conflicts of interests and ensure fairness and inclusiveness within the bureau and provide efficient and fair resolution of discrimination complaints (including retaliation).
- 3) Upon receiving a final agency decision (FAD) finding discrimination or a final order fully implementing an EEOC Administrative Judge's decision finding of discrimination from the OCRD, take appropriate disciplinary action against federal employees who are found to have intentionally committed discriminatory (including retaliatory) acts.
  - a) Within 60 days of receiving a FAD or final action, notify OCRD (1) whether disciplinary action has been proposed against an employee who has committed a discriminatory act; and (2) the reasons for any proposed disciplinary action. If disciplinary action is not taken, provide a brief explanation regarding the reasons why disciplinary action was not proposed.
- 4) Within 60 days of the issuance of this policy, establish a link called "**Public Posting Notice of Finding of Discrimination**" on the public internet website, in a clear and prominent location linked directly from the bureau's home page to the Department's No FEAR Act internet website page at <https://home.treasury.gov/footer/no-fear-act>.
- 5) Develop procedures to include a notation of an adverse action and reason for action in the employee's personnel record (i.e., official personnel file (OPF or electronic OPF) when the agency decides to take an adverse action under 5 USC § 7512 against an employee who was found to have committed a discriminatory act resulting in a finding of discrimination.
  - a) The notation should only be made after being notified from the bureaus' Office of Chief Counsel that all appeals have been exhausted.
  - b) If the bureau decides not to propose disciplinary action, the EEOC may refer the discrimination findings to the Office of Special Counsel (OSC). OSC will review each referral for the purposes of pursuing disciplinary action against the employee who was found to have committed discriminatory acts. If, OSC determines disciplinary action is warranted, OSC may bring a complaint before the Merit System Protection Board (MSPB). Upon receipt of notification from the MSPB of a final order imposing disciplinary action against the employee the bureau shall include a notation of an adverse action in the employee's personnel record as discussed in Paragraph 8, Subsection f of the CFEA Act. If the employee decides to file a civil action in Federal District Court, the bureau must wait until all appeals have been exhausted before a notation can be added to the employee's

personnel file. Once the matter has been referred to OSC, the bureau may not take disciplinary action against the employee, except in accordance with 5 USC § 1214(f).

8. **OFFICE OF PRIMARY INTEREST.** Office of the Assistant Secretary for Management and Office of Civil Rights and Equal Employment Opportunity.
9. **POLICY REVIEW.** The provisions of this Issuance are subject to modifications by changes in pertinent statutes and EEOC regulations. The applicable provision or provisions shall be amended or superseded effective on the dates specified in any statutory or regulatory change, and OCRE shall issue interim guidance addressing the change as soon as practicable. This Issuance will be reviewed after five years.

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Snider Page  
Director, Office of Civil Rights and Equal  
Employment Opportunity