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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2017-0118]

Notice of Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws

AGENCY: Department of Transportation – Office of the Secretary

ACTION: No FEAR Act Notice

SUMMARY: This Notice implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act of 2002). It is the annual obligation for Federal agencies to notify all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Anti-discrimination and Whistleblower Protection Laws.

FOR FURTHER INFORMATION CONTACT: Yvette Rivera, Associate Director of the Equity and Access Division (S-32), Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Room W78-306, Washington, DC 20590, 202-366-5131 or by e-mail at Yvette.Rivera@dot.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve this document online through the Federal Document Management System at <http://www.regulations.gov>. Electronic retrieval instructions are available under the help section of the website.

No FEAR Act Notice

On May 15, 2002, Congress enacted the “Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,” now recognized as the No FEAR Act (Public Law 107-174). One purpose of the Act is to “require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection 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 the United States Department of Transportation (USDOT) to provide this Notice to all USDOT employees, former USDOT employees, and applicants for USDOT employment. This Notice informs such individuals of the rights and protections available 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 because of race, color, religion, sex, national origin, age, disability, marital status, genetic information, or political affiliation. One or more of the following statutes prohibit discrimination on these bases: 5 U.S.C. § 2302(b)(1), 29 U.S.C. § 631, 29 U.S.C. § 633a, 29 U.S.C. § 206(d), 29 U.S.C. § 791, 42 U.S.C. §§ 2000e-16 and 2000ff.

If you believe you were a victim of unlawful discrimination on the bases of race, color, religion, sex, national origin, age, genetic information, and/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 to try and resolve the matter informally. This must be done before filing a formal complaint of discrimination with USDOT (See, e.g., 29 C.F.R. Part 1614).

If you believe you were a victim of unlawful discrimination based on 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. As an alternative to filing a complaint pursuant to 29 C.F.R. Part 1614, you can file a civil action in a United States district court under the Age Discrimination in Employment Act, against the head of an alleged discriminating agency after giving the EEOC not less than a 30 day notice of the intent to file such action. You may file such notice in writing with the EEOC via mail at P.O. Box 77960, Washington, DC 20013, the EEOC website <https://www.eeoc.gov/employees/charge.cfm>, personal delivery, or facsimile within 180 days of the occurrence of the alleged unlawful practice.

If you are alleging discrimination based on marital status or political affiliation, you may file a written discrimination complaint with the U.S. Office of Special Counsel (OSC). Form OSC-11 is available online at the OSC website <http://www.osc.gov>, under the tab to file a complaint. Additionally, you can download the form from <http://www.osc.gov/Pages/Resources-OSCForms.aspx>. Complete Form OSC-11 and mail it to the Complaints Examining Unit, U.S. Office of Special Counsel at 1730 M Street NW, Suite 218 Washington, DC 20036-4505. You also have the option to call the Complaints Examining Unit at (800) 872-9855 for additional assistance. In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the USDOT administrative or negotiated grievance procedures, if such procedures apply and are available.

If you are alleging compensation discrimination pursuant to the Equal Pay Act, and wish to pursue your allegations through the administrative process, you must contact an EEO counselor within 45 calendar days of the alleged discriminatory action as such complaints are processed under EEOC's regulations at 29 C.F.R. Part 1614. Alternatively, you may file a civil action in a court of competent jurisdiction within two years, or if the violation is willful, three years of the date of the alleged violation, regardless of whether you pursued any administrative complaint processing. The filing of a complaint or appeal pursuant to 29 C.F.R. Part 1614 shall not toll the time for filing a civil action.

Whistleblower Protection Laws

A USDOT 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 a 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 the 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 a USDOT employee or applicant for making a protected disclosure is prohibited (5 U.S.C. § 2302(b)(8)). If you believe you are a victim of whistleblower retaliation, you may file a written complaint with the U.S. Office of Special Counsel at 1730 M Street, NW, Suite 218, Washington, DC 20036-4505 using Form OSC-11. Alternatively, you may file online through the OSC website at <http://www.osc.gov>.

Disciplinary Actions

Under existing laws, USDOT retains the right, where appropriate, to discipline a USDOT employee who engages in conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection laws up to and including removal from Federal service. If OSC initiates an investigation under 5 U.S.C. § 1214, USDOT must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation (5 U.S.C. § 1214). Nothing in the No FEAR Act alters existing laws, or permits an agency to take unfounded disciplinary action against a USDOT employee, or to violate the procedural rights of a USDOT employee accused of discrimination.

Additional Information

For more information regarding the No FEAR Act regulations, refer to 5 C.F.R. Part 724, as well as the appropriate office(s) within your agency (e.g., EEO/civil rights offices, human resources offices, or legal offices). You can find additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws at the EEOC website at <http://www.eeoc.gov> and the OSC website at <http://www.osc.gov>.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. § 2302(d).

Issued in Washington, DC, on October 2, 2017.

Charles E. James, Sr., Director,
Departmental Office of Civil Rights,
U.S. Department of Transportation.

