

## NO FEAR ACT NOTICE

On May 15, 2002, Congress enacted the No FEAR Act. One purpose of the Act is to “require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.” No FEAR Act, 107 P. L. 174, 116 Stat. 566, Summary (2002). In support of this purpose, Congress found that “agencies cannot be run effectively if those agencies practice or tolerate discrimination.” *Id.* at 101(1).

The Act also requires the NCUA 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. Alternatively, in a personnel action you must contact an EEO counselor 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). Alternatively, or in some cases additionally, you may be able to pursue a discrimination complaint by filing a grievance through the agency’s administrative or negotiated grievance procedures, if such procedures apply and are available.

## Whistleblower Protection Laws

NCUA employees 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, a personnel action against an employee or applicant because that individual disclosed information 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 an Executive Order specifically requires such information 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 OSC at 1730 M Street, NW, Suite 218, Washington, DC 20036-4505 or online through the OSC Web site – <http://www.osc.gov>. Additionally, you have the right to contact the NCUA Office of the Inspector General at (703) 518-6350 if you believe you have been the victim of whistleblower retaliation.

The NCUA may not discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the NCUA or the Attorney General regarding any possible violation of any law or regulation by any credit union or the NCUA; any director, officer, committee member, or employee of any credit union; or any officer or employee of the NCUA. 12 U.S.C. 1790b(a)(2).

In addition, any employee or former employee of the NCUA who believes he or she has been discharged or discriminated against in violation of 12 U.S.C. 1790b(a)(2) may file a civil action in the appropriate United States district court before the close of the 2-year period beginning on the date of such discharge or discrimination. The complainant must also file a copy of the complaint initiating such action with the NCUA Board. 12 U.S.C. 1790b(b).

If the district court determines that the NCUA violated 12 U.S.C. 1790b(a)(2), it may order the NCUA to reinstate the employee to his or her former position, pay compensatory damages, or take other appropriate actions to remedy any past discrimination. 12 U.S.C. 1790b(c).

As required by the Whistleblower Protection Enhancement Act of 2012, Pub. L. No. 112-199, §§104(b)(2), 115(a)(2), NCUA hereby gives notice on its website that it is a prohibited personnel practice for the agency to implement or enforce any nondisclosure policy, form, or agreement, that does not contain the following statement prescribed at 5 U.S.C. 2302(b)(13):

“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing

statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this [nondisclosure policy, form, or] agreement and are controlling.”

The following Executive orders and statutory provisions are controlling in the case of a conflict with an NCUA nondisclosure policy, form, or agreement:

- Executive Order No. 13526 (December 29, 2009) [EO 13526](#);
- Section 7211 of Title 5, United States Code [5 USC 7211](#) (governing disclosures to Congress);
- Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act [10 USC 1034](#) (governing disclosure to Congress by members of the military);
- Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 [5 USC 2302\(b\)\(8\)](#) (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats);
- Intelligence Identities Protection Act of 1982, 50 U.S.C. 421 *et seq.* [50 USC 421 et seq.](#) (governing disclosures that could expose confidential Government agents);
- The statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798 and 952 of title 18, United States Code [18 USC 641](#); [18 USC 793-798](#); [18 USC 952](#);
- Section 4(b) of the Subversive Activities Act of 1950, 50 U.S.C. 783(b) [50 USC 783\(b\)](#); and
- Section 4712 of Title 41, United States Code, as amended [41 USC 4712](#) (providing enhanced protection against reprisal for whistleblower disclosures by employees of Federal contractors or grantees; pilot program scheduled to end 2017).

### **Retaliation for Engaging in Protected Activity**

NCUA 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 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 existing laws, NCUA 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 NCUA 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 the NCUA (e.g., Equal Opportunity Programs, Office of General Counsel, or Office of Human Resources). Additional information regarding federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site – <http://www.eeoc.gov> and the OSC Web site – <http://www.osc.gov>.

## **Existing Rights Unchanged**

Neither the No FEAR 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 provision of law specified in 5 U.S.C. 2302(d), providing the rights and remedies available to employees and applicants for discrimination on the basis of race, color, religion, sex, national origin, age, handicap, marital status or political affiliation are not lessened or extinguished by the section.