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DEFENSE NUCLEAR FACILITIES SAFETY BOARD

No FEAR Act

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) is providing notice to its employees, former employees, and applicants for federal employment about the rights and remedies available to them under the Federal antidiscrimination, whistleblower protection, and retaliation laws. This notice fulfills the Board's initial notification obligation under the Notification and Federal Employees Antidiscrimination and Retaliation Act (No FEAR Act), as implemented by Office of Personnel Management (OPM) regulations at 5 CFR part 724.

DATES: This notice is effective July 1, 2008.

FOR FURTHER INFORMATION CONTACT: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004. Telephone: (202) 694-7062. FAX: (202) 208-6518.

SUPPLEMENTARY INFORMATION: 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. See Pub. L. 107-174, codified at 5 U.S.C. 2301 note. As stated in the full title of the Act, the Act is intended to "require that federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." In support of this purpose, Congress found that:

Agencies cannot be run effectively if those agencies practice or tolerate discrimination.

Pub. L. 107-174, section 101(1).

The Act also requires the Board to provide this notice to federal employees, former federal employees and applicants for federal employment to inform them 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 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, age, disability, marital status, or political affiliation, 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 the Board. 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 the Agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

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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 (OSC) at 1730 M Street, NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site: <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 Antidiscrimination Laws and Whistleblower Protection Laws or, if applicable, 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 Board's EEO Director or Counselors. 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

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).

A.J. Eggenberger,
Chairman.

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