



Human Resources Issuance System

Chapter: 900

Transmittal Number: 06-003

Date: August 28, 2006

Office: Office of Equal Opportunity and Diversity

Subject: Processing Claims of Discrimination on the Basis of Sexual Orientation, Status as a Parent, and Protected Genetic Information

1. **PURPOSE.** To establish Departmental policy and procedures for processing complaints of discrimination on the basis of sexual orientation, status as a parent, and protected genetic information.
2. **SCOPE.** The Directive applies to all bureaus, offices, and organizations in the Department of the Treasury. The authority of the Inspectors General is set forth in section 3 of the Inspector General Act and the Internal Revenue Service Restructuring and Reform Act of 1998, and defined in Treasury Order 11-01 (OIG) and Treasury Order 115-01 (TIGTA), or successor orders. The provisions of this order/directive shall not be construed to interfere with that authority.
3. **CANCELLATION.**
 - A. Office of Equal Opportunity Program (OEOP) Memorandum dated August 1, 1997, subject: Processing Complaints of Sexual Orientation Discrimination, as amended December 17, 1997;
 - B. OEOP Memorandum No. 007-01, dated October 30, 2001, subject: Parental Status Complaints; and,
 - C. OEOP Memorandum No. 005-01, dated November 16, 2001, subject: Protected Genetic Information.

4. EFFECTIVE DATE. This policy is effective with the date of this chapter.
5. REFERENCES.
 - A. Executive Order 11478 dated August 8, 1969 (as amended), subject: Equal Opportunity in the Federal Government;
 - B. Executive Order 13087 dated May 28, 1998 (amending Executive Order 11478), subject: Discrimination on the Basis of Sexual Orientation;
 - C. Executive Order 13152 dated May 2, 2000 (amending Executive Order 11478), subject: Discrimination on the Basis of Status as a Parent; and
 - D. Executive Order 13145 dated February 8, 2000 (amending Executive Order 11478), subject: Prohibiting Discrimination in Federal Employment Based on Genetic Information.

This chapter supplements policies and requirements contained in the references cited above; it is not self-contained, and must be read in conjunction with the cited references and any applicable collective bargaining agreements.

6. BACKGROUND. In 1997, this office (formerly the Office of Equal Opportunity Program) established a policy for processing complaints of discrimination on the basis of sexual orientation. Thereafter, the policy was modified to include processing of complaints alleging discrimination on the basis of parental status and protected genetic information. This policy is being issued to make available in one location the policies in these three areas for which the same complaint processing procedures apply.
7. POLICY. It is the policy of the Department of Treasury to process allegations of discrimination on the basis of sexual orientation, status as a parent, and protected genetic information through the Department's modified EEO complaint structure.
8. SEXUAL ORIENTATION.
 - A. Authority. In May 1998, Executive Order 13087 (subject: Discrimination on the Basis of Sexual Orientation) amended Executive Order 11478 (subject: Equal Opportunity in the Federal Government) to prohibit discrimination based on sexual orientation.
 - B. Definition. For the purposes of this policy, sexual orientation means homosexuality, bisexuality, or heterosexuality, whether the orientation is real or perceived.
 - C. Prohibitions. Executive Order 13087 and the Treasury Department Employee Rules of Conduct prohibit the Department of Treasury from taking adverse employment actions or otherwise discriminating against any covered individual on the basis of the person's sexual orientation, whether the orientation is real or perceived, with respect to decisions

about hiring, advancement, compensation, terms, conditions, and privileges of employment.

9. PARENTAL STATUS.

- A. Authority. In May 2000, Executive Order 13152 (subject: Discrimination on the Basis of Status as a Parent) amended Executive Order 11478 (subject: Equal Opportunity in the Federal Government) to prohibit discrimination based on an individual's status as a parent.
- B. Definition. "Status as a parent" refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is: (1) a biological parent; (2) an adoptive parent; (3) a foster parent; (4) a stepparent; (5) a custodian of a legal ward; (6) *in loco parentis*¹ over such an individual; or (7) actively seeking custody or adoption of such an individual.
- C. Prohibitions. Executive Order 13152 prohibits the Department of Treasury from taking adverse employment actions or otherwise discriminating against any covered individual on the basis of the person's status as a parent with respect to decisions about hiring, advancement, compensation, terms, conditions, and privileges of employment.

10. PROTECTED GENETIC INFORMATION.

- A. Authority. In February 2000, Executive Order 13145 (subject: Prohibiting Discrimination in Federal Employment Based on Genetic Information) amended Executive Order 11478 (subject: Equal Opportunity in the Federal Government) to prohibit discrimination against employees based on protected genetic information, or information about a request for or the receipt of genetic services.
- B. Definitions.
 - (1) Protected Genetic Information includes information about an individual's genetic tests; genetic tests of an individual's family members; and the occurrence of a disease, medical condition, or disorder in family members of the individual.
 - (2) Genetic Tests include the analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites in order to detect disease related genotypes or mutations.
 - (3) Genetic Monitoring is the periodic medical examination of employees to determine whether any of their genes have been affected by the toxic substances they use, or are exposed to, in performing their jobs.

¹ *In loco parentis* is a Latin phrase meaning "in the place of the parent" and refers to a person who has assumed the responsibilities and obligations of a parent.

- (4) Genetic Services are health services, including genetic tests, provided to obtain or interpret genetic information for diagnostic or therapeutic purposes or for purposes of genetic education or counseling.
- (5) Current Health Status information includes information about sex, age, physical exams, and chemical, blood, or urine analyses and is generally not considered protected genetic information.

C. Prohibitions. Executive Order 13145 prohibits the Department of Treasury from taking adverse employment actions or otherwise discriminating against any covered individual on the basis of the person's protected genetic information, including:

- (1) Discharging, failing to hire, or otherwise discriminating against a covered individual with respect to the individual's compensation and terms, conditions, and privileges of employment based on the person's protected genetic information, or the person's request for, or receipt of, genetic services;
- (2) Limiting, segregating, or classifying its employees based on protected genetic information;
- (3) Requesting, requiring, collecting, or purchasing protected genetic information about employees, with limited exceptions;
- (4) Maintaining protected genetic information in general personnel files, rather than in confidential medical files; and
- (5) Disclosing protected genetic information about employees, except in limited circumstances.

D. Collection and Use of Information. The Department of Treasury may request, collect, and use protected genetic information with respect to an applicant who has been given a conditional offer of employment or to an employee under the following limited circumstances:

- (1) the request is consistent with the Rehabilitation Act and other applicable law;
- (2) the information is used for the purpose of deciding whether further medical evaluation is needed to diagnose a current disease, medical condition or disorder, if the disease, medical condition or disorder could prevent the individual from performing the essential functions of the position;
- (3) if an employee voluntarily uses Treasury-provided genetic or health care services, the employee must have provided management with prior, knowing, voluntary, and written authorization to collect the protected genetic information and the person obtaining the protected genetic information must not disclose the information except for the following limited administrative purposes: to persons assessing the genetic or

health care services program; verifying that services were provided for payment/accounting purposes; or to persons compiling and analyzing information in anticipation of, or for use in, civil or criminal legal proceedings;

- (4) if the agency conducts genetic monitoring of biological effects of toxic substances, the employee must have provided management with prior, knowing, voluntary, and written authorization to collect the protected genetic information; the employee must be notified as to how and when to obtain the results of the monitoring; and the employer receives results of the monitoring only in aggregate terms that do not disclose the identity of specific employees.

E. Confidentiality and Disclosure. Protected genetic information is confidential and must be treated the same as other confidential medical information, including maintaining a separate file from the individual's Official Personnel File and all other personnel files. Disclosure is prohibited except in the following circumstances: the employee requests the information; executive branch officials investigating compliance with the Executive Order; health or occupational researchers conducting research that complies with 45 C.F.R. Part 46 (concerning research involving human subjects); in response to a judicial order or congressional subpoena; or if required by federal law.

11. RESPONSIBILITIES.

A. Heads of Bureaus shall ensure that:

- (1) Bureau policies regarding non-discrimination include prohibitions against discrimination on the basis of sexual orientation, parental status, and protected genetic information; and
- (2) Managers and supervisors are aware of their responsibilities under the Executive Orders and established policies and procedures, and are held accountable for their conduct.

B. EEO Officers shall ensure that EEO counselors are prepared to:

- (1) explain to employees, applicants, and former employees that the current federal non-discrimination statutes do not prohibit discrimination on the basis of sexual orientation, status as a parent, or protected genetic information (where there is no claim of disability discrimination) and thus, there is no right to file a civil action in Federal District Court;
- (2) advise employees, applicants, and former employees of other possible avenues of redress (including possible limitations) such as:
 - (i) requesting mediation under the Bureau's Alternate Dispute Resolution program;
 - (ii) filing a grievance under the negotiated grievance procedure in an applicable collective bargaining agreement, if any;

- (iii) filing a complaint with the Office of Special Counsel;
 - (iv) appealing to the Merit Systems Protection Board (if applicable); and,
 - (v) filing an administrative grievance.
- (3) advise employees, applicants, and former employees that if the individual elects to use one or more of the avenues identified in (2) (ii) – (v), the modified complaint process will not be available and any complaint filed under the process will be dismissed;
- (4) advise employees, applicants, and former employees of their right to pursue a complaint of disability discrimination (for discrimination on the basis of protected genetic information where there is an alleged disability) under the Rehabilitation Act and EEOC regulations, including the option of using ADR;
- (5) advise employees, applicants, and former employees of their right to pursue a complaint of employment discrimination on the basis of sexual orientation, status as a parent, or protected genetic information under the Department’s modified complaint structure, including explaining the differences between the regulatory and the modified complaint structure;
- (6) advise employees, applicants, and former employees that they have a right to representation and to anonymity in the process;
- (7) advise employees, applicants, and former employees that when claims of discrimination based on sexual orientation, status as a parent, or protected genetic information are included with other bases of discrimination covered by applicable statutes (race, color, religion, sex, national origin, age, or disability), the claims of discrimination based on sexual orientation, status as a parent, or protected genetic information must be processed through the modified procedure, while the other claims are to be processed through the procedures established by EEOC. The individual has the right to hearing or to appeal a final agency decision only on the claims covered by applicable statutes and the EEOC regulations.

12. PROCEDURES.

- A. An individual who believes he or she has been discriminated against because of sexual orientation, status as a parent, or protected genetic information and wishes to raise a claim of discrimination must follow the Department’s modified complaint procedure unless the employee elects to raise the matter in a forum outside the EEO complaint process (see paragraph 11 B.(2) (ii) - (v) above). The modified complaint procedure follows the same procedures and standards as the statutory EEO complaint process with the following key exceptions: no right to an EEOC hearing and no right to appeal a final agency decision.
- B. If the aggrieved individual elects to pursue a claim of discrimination on the basis of sexual orientation, status as a parent, or protected genetic information, he or she must

contact an EEO counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action. An extension of time may be granted upon a showing of good cause.

- C. The EEO counselor will define the issues and bases of the claim and attempt resolution through counseling activities and alternative dispute resolution. The counselor will also advise the individual of his or her rights and responsibilities under the modified complaint structure.
- D. If the matter is not resolved within the 30 day counseling period (or the 90 day period for ADR), the individual shall be provided with a Notice of a Right to File a Discrimination Complaint. The individual must file the formal complaint with the Treasury Complaint Center (TCC) within 15 days of receipt of the Notice. The deadline may be extended upon a showing of good cause. If the complaint is not filed by the specified or extended deadline, it may be dismissed as untimely.
- E. The TCC shall acknowledge receipt of the complaint. The TCC will identify the issues raised in the formal complaint and may accept some or all of the allegations made. Dismissal of some or all of the complaint allegations may occur at any time if it is determined that the aggrieved individual cannot be located or that the complaint:
 - (1) does not state a claim of discrimination;
 - (2) was filed outside the applicable time limits for contacting the EEO counselor or filing the complaint;
 - (3) makes allegations that have been raised in another grievance procedure;
 - (4) is not complete despite written requests to the aggrieved individual by the Agency for relevant information;
 - (5) is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory;
 - (6) alleges dissatisfaction with the processing of a previously filed complaint; or
 - (7) is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. A clear pattern of misuse of the EEO process requires: (i) evidence of multiple complaint filings; (ii) allegations that are similar or identical, lack specificity or involve matters previously resolved; or (iii) evidence of circumventing other administrative processes, retaliating against the agency's in-house administrative processes or overburdening the EEO complaint system.

If the TCC believes the entire claim should be dismissed, the TCC shall refer the claim to the Department's Office of Equal Opportunity and Diversity (OEOD) with an analysis of the reasons for dismissal.

- F. The TCC will arrange for an investigation of the accepted allegations in the complaint. Upon completion of the investigation, the individual is entitled to a final agency decision by the OEOD. Under the modified complaint structure, claims of discrimination based on sexual orientation, status as a parent, or protected genetic information (where there is no claim of disability discrimination) are not entitled to a hearing before an EEOC administrative judge.
- G. The final agency decision will include a determination if discrimination occurred and will prescribe corrective action, if appropriate. Under the modified complaint structure, for claims of discrimination based on sexual orientation, status as a parent, or protected genetic information (where there is no claim of disability discrimination), the decision of the OEOD is final. There is no right to further review under the modified EEO complaint structure.
- H. If OEOD finds that discrimination has occurred, only "make whole" remedies will be ordered. The goal is to place the Complainant in the same position as if the discrimination had not occurred. Compensatory damages are not available. The remedy may include, but is not limited to the following:
 - (1) a commitment from the Agency that corrective or preventive action will be taken;
 - (2) an offer of placement in the position at issue (or an equivalent position) the person would have occupied absent discrimination;
 - (3) payment of any lost earnings or benefits the person may have been denied, including back pay (only if the employee suffered a diminution in pay);
 - (4) cancellation of any unwarranted personnel action and restoration of the employee's prior status;
 - (5) expungement from the employee's official personnel file of any adverse actions relating to the discriminatory employment practice;
 - (6) full opportunity to participate in the employee benefit denied (if any); and
 - (7) attorney's fees (only if the individual is entitled to a back pay award).

13. OFFICE OF PRIMARY INTEREST. Office of Equal Opportunity and Diversity, Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer.

/s/

Rochelle F. Granat
Deputy Assistant Secretary for Human Resources
and Chief Human Capital Officer