

# Satellite Broadcast Participant Guide



## *EEO Issues for Managers and Supervisors*

### *Part 1*

### *EEO & Leadership - Harassment Issues*

### *Part 2*

### *No Fear Act & Retaliation - Ethics*

Satellite Broadcast  
Bureau of Land Management  
National Training Center  
Phoenix, Arizona

July 12, 2006

**EEO Issues for Managers & Supervisors –  
EEO & Leadership – Harassment Issues – No Fear Act & Retaliation - Ethics**

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## **How to Interact with the Instructor**

We encourage you to ask questions and share your concerns with the instructors throughout this course.

When you have a question, press the push-to-talk button and say “Excuse me, this is (state your first name) at (state your location).” Then release the push-to-talk button. This is important. Until you release the button, you will not be able to hear the instructor.

If you were physically in the classroom with the instructor, you would raise your hand to let them know you had a question or comment. Then you would wait for the instructor to recognize you and ask for your question. We are all familiar with that “protocol” for asking questions or making comments.

There is also a “protocol” to follow with interactive courses to ensure you can easily ask questions and others can participate as well. It may seem a little strange at first, asking a question of a TV monitor. Remember, it is the instructor you are interacting with and not the monitor. As you ask more questions and participate in more interactive courses, you will soon be focusing only on the content of your questions and not the equipment you are using to ask it.

As part of the equipment at your location, there are several push-to-talk microphones. Depending on the number of students at your location, you may have one directly in front of you or you may be sharing one with other students at your table.

The instructor will acknowledge you and ask for your question or comment. Stating your name and location helps other students who are participating at different locations to get to know their classmates.

The instructor may also call upon you to participate in a brainstorming session, role play, or other interactive class events. Respond to the instructor’s questions using the push to talk microphone.

***Part 1***

***EEO & Leadership - Harassment Issues***

***EEO & Leadership – Presented by:***  
***Sharon Eller***  
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***Bureau of Land Management***

## **EEO and Leadership**

### **What managers need to know regarding EEO and Leadership:**

- EEO does not exist in a vacuum
- Managers must ensure fair treatment for everyone

### **Why are EEO and Leadership important?**

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### **EEO is:**

The fair treatment of our employees - This means that one must follow the rules, consistently and with common sense. Leaders must give each and every person the opportunity to seek advancement based on his/her own merits without bias or prejudice.

### **EEO as a fundamental element of leadership:**

If we operate our areas well, follow the rules and treat everyone fairly and respectfully that will result in little reason to complain. On the other hand, if we do not, complaints will take place which will result in monetary constraints and could lead to No Fear Act implications.

### **Leadership versus Management:**

- You lead people
- You manage processes and things
- Leadership is a participatory sport
- Leadership is an art which is learned by doing



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**Three elements of Fairness:**

- **Reciprocal:**

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- **Proportionate:**

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- **Impartial:**

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***RESPECT IS A KEY ELEMENT—EVERYONE WANTS TO BE TREATED AS INDIVIDUALS AND WE WANT OTHERS TO RECOGNIZE OUR BASIC HUMANITY.***

**How you can show commitment to EEO and show others that you do care:**

- Attend Special Emphasis Programs
- Encourage your employees to attend Special Emphasis Programs
- Encourage your employees to host Special Emphasis Programs

**Leadership and enforcement of standards:**

- This portion is often the hardest part of leadership
- A leader must put friendship aside
- A leader must be tough
- Sometime it means a decision such as termination
- Address wrong doings as they occur
- Refer to Table of Penalties and Offenses for appropriate discipline

**Three keys to success of a Personnel system:**

- **Transparency:**

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- **Objectivity:**

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- **Fairness:**

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**EEO is a fundamental part of leadership. Leaders must set the ethical climate for our organizations, emphasizing fairness and respect. Fairness must be reciprocal, proportional, and impartial. Respect means paying attention to the individual.**

## **HARASSMENT ISSUES**

### **What is Harassment?**

- Any unwelcome \_\_\_\_\_ or \_\_\_\_\_ conduct.

### **What is Unwelcomeness?**

- Harassment is unlawful only if the conduct is unwelcome and if the harassment is because of a person's protected status.
- If the protected employee did not solicit or invite the conduct and regards it as undesirable, it is considered unwelcome.
- The main piece of this is whether it is directly or indirectly communicated to the alleged harasser that, in fact, the conduct was unwelcome.

### **What are the Protected Bases?**

- Everyone is covered by a protected basis.
- The protected bases:

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### **What is Workplace Harassment?**

- Workplace harassment is the combination of harassment actions that occur because of a person's \_\_\_\_\_.
- It can take place on the job or at activities related to the workplace.

### **What is Prohibited?**

- Conduct that alters the conditions of employment, such as:
  - Sexual advances, pressure for dates
  - Jokes, slurs, innuendos
  - Beatings, threats, inappropriate touching
  - Inappropriate gestures, pictures, graffiti, slang expressions

### **What is not Covered?**

- Areas such as simple teasing, offhand \_\_\_\_\_, which are a \_\_\_\_\_ time reference.

### **Who is Involved in Workplace Harassment?**

At least 2 people:

- The alleged victim (male or female)
- The alleged harasser (male or female)
  
- Alleged victim can be any employee and
- Alleged harasser can a supervisor, co-worker or non-employee

The victim and the harasser can be from the same \_\_\_\_\_ basis.

### **Elements of Unlawful Workplace Harassment:**

Four basic questions one must consider regarding a claim of unlawful harassment:

- Is the conduct \_\_\_\_\_?
- Is the conduct of the alleged harasser based on a **protected** \_\_\_\_\_?
- Does the conduct result in a **“tangible employment action”** or create a **“hostile work environment”**? and
- Is there a legal basis for holding the **employer liable**?

### **Tangible Employment Actions:**

Examples:

- Hire and/or Fire
- Promote or Fail to Promote
- \_\_\_\_\_
- Reassign
- \_\_\_\_\_
- Assign Work
- Change Benefits, Terms, Conditions

### **Employer Liability—Tangible Employment Action:**

Employer is always liable when:

- Harassment is by a \_\_\_\_\_.
- Harasser has authority to make decisions affecting the victim.
- Harasser has authority to direct victim's daily work activities.

### **Hostile Work Environment Harassment:**

Anyone in the workplace might commit this type of harassment –

- a supervisor,
- co-worker, or non-employee.

For example, negative references to an employee's religious beliefs may be considered harassment whether voiced by a supervisory official responsible for evaluating the employee's performance or by a contractor who comes to the office to make repairs.

The person claiming hostile work environment harassment does not have to be the person at whom the offensive conduct is directed, but can be anyone affected by the conduct. An employee may be subjected to an atmosphere where a supervisor routinely makes derogatory and negative stereotypical remarks about another ethnic group. The fact that the comments are not directed towards the employee and he is not a member of that ethnic group does not alter the effect of the conduct on his work environment.

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**Examples of actions that may create hostile work environment harassment include:**

- Pressure for dates;
- Making offensive remarks about looks, clothing, or body parts;
- Touching in a way that may make an employee feel uncomfortable;
- Telling sexual jokes, hanging sexually suggestive posters, etc.;
- The use of racially derogatory words, phrases, or epithets;
- Demonstrations of a racial or ethnic nature, such as the use of gestures, pictures or drawings which would offend a particular racial or ethnic group;
- Comments about an individual's skin color or other racial/ethnic characteristics;
- Negative comments about an employee's religious beliefs;
- Negative remarks regarding an employee's birthplace or ancestry;
- Negative comments regarding an employee's age when referring to workers 40 and older; and
- Derogatory or intimidating references to an employee's mental or physical impairment.

**Key Issues:**

- Context, \_\_\_\_\_ and/or severity
- Must apply reasonable person standard

Tangible Effect on Victim's Job \_\_\_\_\_ Necessary

Severe Psychological Harm \_\_\_\_\_ Necessary

**Employer Liability—Hostile Work Environment Harassment**

- Automatic for \_\_\_\_\_ Ranking Official
- Supervisor (unless both parts of affirmative defense are established)
- Co-worker of Non-Employee (only if employer knew or should have known and did not take corrective action)

**Hostile Work Environment (Supervisor)**

Must establish a \_\_\_\_\_ part defense:

***Part 1: Did the employer exercise reasonable care to prevent and correct harassment of the complaint?***

- Did the employer establish, communicate to employees and implement an adequate anti-harassment policy and complaint procedure?
- Did the employer conduct an adequate \_\_\_\_\_ once he/she became aware of harassment?

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- If the employer's investigation found that the complainant was harassed, did the employer take immediate and appropriate corrective action?
- Did the employer undertake other reasonable measures to \_\_\_\_\_ and \_\_\_\_\_ harassment?

### ***Part 2: Did the complainant unreasonably fail to utilize the employer's complaint procedure or to avoid all harm otherwise?***

- Did the complainant use the employer's complaint process, provide truthful information to the employer and otherwise cooperate in the investigation?
- Did the complainant unreasonably delay complaining (this could reduce damages)?
- If the complainant did not complain to the employer, why not (fear of retaliation, ineffective complaint process, inaccessible officials designated to take complaints, etc.)?
- If the complainant did not complain to the employer, did s/he take other steps to avoid harm (file a charge with EEOC or a state/local Fair Employment Practices Agency (FEPA), file a formal complaint with employer's administrative EEO process, etc.)?

### **Hostile Work Environment (Harassment by Co-Worker or Non-Employee)**

- Employer liable if he/she knew or should have known of harassment and failed to take immediate and appropriate action
- Employer knowledge is assumed if the victim complains to a supervisor, or conduct occurred in the presence of a supervisor, or conduct is widespread and reoccurring.

### **Appropriate Preventive Actions:**

- Policy
- Training
- Internal Complaint Procedures
- Monitor Reinforcement of Policy

### **Appropriate Corrective Actions:**

- Stop Harassment Immediately
- Investigate
- Protect Against Retaliation

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- Provide Appropriate Relief

### **Corrective Actions to Stop and Prevent Harassment:**

Examples include:

- Oral or written admonishment
- Transfer or reassignment
- Demotion
- Suspension or discharge
- Training or counseling harasser
- Monitoring harasser

### **Measures to Correct the Effects of Harassment:**

Examples include:

- Restoration of Leave
- Expunge Negative Evaluations
- \_\_\_\_\_
- Apology from Harasser
- Compensation for Losses

### **What to do if you are a Victim of Harassment:**

- Remain cool and professional
- Be direct and candid, let your feelings be known to harasser
- \_\_\_\_\_
- Keep a record of dates, times, witnesses
- Talk to your supervisor or other representative
- Follow-up
- Inform the employer of desired remedy

### **Harassment Affects the Workplace**

Results in:

- High legal costs and fines
- Damaged organizational image
- \_\_\_\_\_
- Higher employee turnover
- Higher costs training new employees
- It's against the law!

***Part 2***  
***No Fear Act & Retaliation - Ethics***

***No Fear Act & Retaliation – Presented by:***

***Richard Trinidad***

***Associate Inspector General for Whistleblower Protection***

***Department of the Interior***

***Ethics – Presented by:***

***Stephanie Langseth***

***Deputy Ethics Counselor***

***Bureau of Land Management***

**NO FEAR ACT / WHISTLEBLOWER CONSIDERATIONS**

**PRESENTED BY**

**RICHARD S. TRINIDAD  
ASSOCIATE INSPECTOR GENERAL FOR  
WHISTLEBLOWER PROTECTION**

Congress enacted the Notification and Federal Employee Anti-discrimination Act (No Fear Act) of 2002 and the Whistleblower Protection Act of 1989 to assist federal employees when they are threatened with, or actually suffer, retaliation from agency officials for engaging in protected activities, such as reporting discrimination or waste, fraud or abuse.

In its continuing efforts to combat discrimination, as well as make management accountable, Congress specifically created the No Fear Act to make the public aware of prohibited personnel practices occurring within government by ordering a public display of information regarding the number of complaints based on discrimination or retaliation; the number and amounts of any subsequent court ordered settlements, and the number of employees disciplined for having engaged in discriminatory actions.

Although the No Fear Act is intended to capture information regarding both forms of retaliation, i.e., information based on providing evidence of discriminatory behavior as well as information on waste, fraud or abuse; departments are actually receiving more data on retaliation for participating in protected Equal Employment Activity.

The Whistleblower Protection Act, on the other hand, protects federal employees who have been retaliated against as a result of allegations they provided relating to improper government activity. These allegations often stem from perceived waste, fraud, or abuse.

**History of the No Fear Act**

There are many laws that address retaliation for using the Equal Employment Opportunity (EEO) process or the Whistleblower Protection Act. While these laws remain valid, many managers still do not abide by them. In 2002, Congress decided to address these issues.

In 2000, a federal court found the Environmental Protection Agency (EPA) guilty of discrimination and awarded \$300,000 to environmental scientist, Dr. Marsha Coleman-

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Adebayo. In the settlement, EPA never acknowledged its guilt and simply requested that the Department of Justice write a check to Dr. Coleman-Adebayo. After the judgment, EPA managers engaged in retaliation for her legal actions and she won an additional \$300,000. This case, as well as those at other federal agencies (FBI, ATF, DEA, INS, USDA, USIA, and SSA), caused Congress to create a law that would again address both discrimination in the workplace as well as retaliation against employees who participated in the EEO process or reported improper government activity. The No Fear Act was enacted May 15, 2002, and it became effective on October 1, 2003.

### **The No Fear Act is divided into three Parts:**

- Title I – General Provisions or “The Sense of Congress”
- Title II – Discrimination & Retaliation, Reimbursement, Notification, Reporting Requirements
- Title III – EEO Data Disclosure, Posted Data by Federal Agencies

### **Title I - General Provisions**

The first part of the No Fear Act states that federal agencies:

1. Should not retaliate for federal court-ordered judgments or settlements relating to discrimination and whistleblower laws by targeting the employee or others with prohibited personnel practices.
2. Should not use Reductions in Force (RIF's) or furloughs as a means of funding any reimbursement to the Treasury.
3. Are expected to reimburse the Judgment Fund of the Treasury within a “reasonable time” (45 days). The law allows agencies to extend reimbursement over several years in order to avoid:
  - RIFS
  - Furloughs
  - Other reductions in compensation and benefits
  - An adverse effect on the mission of the agency
4. Ensure management receives adequate training regarding managing a diverse workforce and the use of the departmental alternative dispute resolution process.

## **FINANCIAL CONSIDERATIONS**

Since the No Fear Act took effect on October 1, 2003, the Department of the Interior (DOI) is now required to pay for all federal court settlements/judgments that were previously paid by the Department of Justice. In actuality, DOI reimburses the Treasury, which initially pays the plaintiff. DOI then has 45 days to reimburse the Treasury. DOI uses an internal system to collect funds from the respective bureaus through reimbursable support agreements.

Prior to reimbursing the Treasury, DOI's Solicitor's office, in conjunction with the Office of Civil Rights, is responsible for reviewing all settlements for legal and procedural sufficiency. The DOI Finance Office then coordinates with respective bureau budget officers, who then coordinate with the respective bureau program areas.

There are several potential issues, however, that managers must consider, including the following:

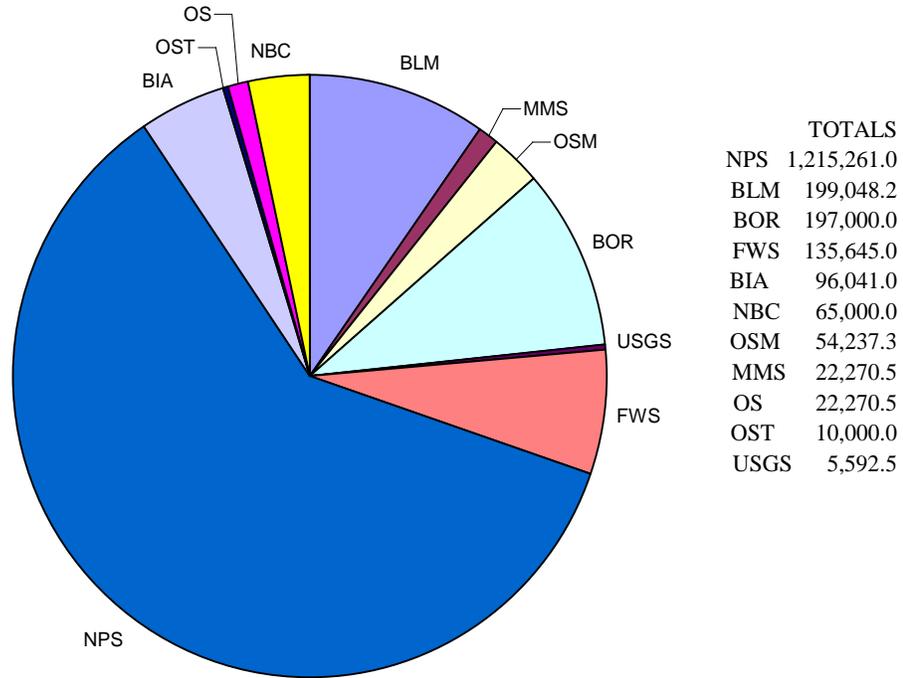
1. As the manager, you might not agree with the settlement.
2. You were sent a bill by the DOI budget office to pay for the settlement. Where would the money come from to pay these judgments?
3. What happens to the budget of the manager who actually engaged in inappropriate behavior or who supervises the person who caused the discrimination or retaliation suit to be filed?
4. How will a manager's performance rating change if one of the people under that manager's command caused the loss of several thousand dollars to that manager's budget?

While there are no clear answers, these questions will have to be answered by the Department as they develop.

From October 2004 through June 2006, the Department began keeping records for purposes of the No Fear Act. Since that time, DOI has paid approximately \$ 2,075,000 in court ordered settlements. The National Park Service has been the largest "contributor," with the Bureau of Land Management and the Bureau of Reclamation listed as second and third, respectively.

Although there are more settlements in the pipeline, the following charts provide an indication of what the bureaus have paid in the previous year and a half:

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DEPARTMENT OF THE INTERIOR										
No FEAR Act Payments/Settlements										
	Total	Total	Thirteenth	Fourteenth	Fifteenth	Sixteenth	Seventeenth	Eighteenth	Nineteenth	
	2004	2005	Cohort	Cohort	Cohort	Cohort	Cohort	Cohort	Cohort	Total
Bureau			1/22/2002	2/6/2006	2/27/2006	3/2/2006	3/31/2006	4/11/2006	5/5/2006	
Status			Paid	Paid	Paid	Paid	Paid	NPS Paid	BIA Pending	Pending
Bureau of Land Management	72,000.0	2,048.2		125,000.0						199,048.2
Minerals Management Service	22,270.5	0.0								22,270.5
Office of Surface Mining	54,237.3	0.0								54,237.3
Bureau of Reclamation	150,000.0	47,000.0								197,000.0
Central Utah Project	0.0	0.0								0.0
U.S. Geological Survey	0.0	5,692.5								5,692.5
Fish and Wildlife Service	15,000.0	0.0			70,645.0	25,000.0	25,000.0			135,645.0
National Park Service	404,261.5	101,000.0						135,000.0	575,000.0	1,215,261.5
Bureau of Indian Affairs	0.0	75,000.0						21,041.0		96,041.0
Office of the Special Trustee	0.0	0.0							10,000.0	10,000.0
Office of Insular Affairs	0.0	0.0								0.0
Office of the Inspector General	0.0	0.0								0.0
Office of the Solicitor	0.0	0.0								0.0
Office of the Secretary	22,270.5	0.0								22,270.5
National Business Center	0.0	0.0	65,000.0							65,000.0
<b>Total</b>	<b>740,039.8</b>	<b>230,740.7</b>	65,000.0	125,000.0	70,645.0	25,000.0	25,000.0	156,041.0	585,000.0	<b>2,022,466.5</b>

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Here is another way to look at the largest Federal Court ordered expenditures:

NPS - 43%        \$1,215,261

BLM - 17.5%     \$199,048

BOR - 17%        \$197,000

At this point, the question becomes, what will a manager do when his/her employee files a complaint? What a manager should never do is retaliate against the complaining employee with some kind of prohibited personnel practice. What a manager should do is handle issues regarding the person under his/her supervisory authority who caused the complaint to occur.

### **Title II - Notification & Reporting Requirements**

Title II of the No Fear act requires that federal employees must be notified of the following information:

- **A written notice of rights and remedies under anti-discrimination and whistleblower protection laws.** A hand-out has been prepared by Office of Civil Rights (OCR) and is available through the OCR or respective human resources office.
- **Information must be placed on the Internet.** As of January 2005, and continuing every 3 months, all required data is placed on the DOI Web page under the title “No Fear.”
- **Training regarding rights and remedies.** A one hour computer based on-line training module regarding EEO and Whistleblower rights and responsibilities has been created and made available to all DOI staff.

### **Title II - Rights and Remedies Training**

#### **EEO Reprisal Protection**

It is important to distinguish between the two common, but very different types of retaliation. One type involves reprisal by management against an employee who has engaged in a protected EEO activity, such as making a claim of sexual harassment. Protection from EEO retaliation is provided to individuals who report any practice made unlawful by Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Equal Pay Act, and the Rehabilitation Act. The DOI Office of

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Civil Rights (OCR) investigates allegations of retaliation against those employees participating in this type of protected activity.

In most cases, OCR attempts early resolution through either EEO counseling or alternative dispute resolution. If this is not successful, OCR then conducts a formal investigation and subsequently renders a final decision with corrective action if appropriate.

These laws do not provide an employee protection from trivial office disputes. What may be unfriendly or uncivil behavior in the office is not necessarily unlawful. They *do* protect those who participate in the EEO process or allege discrimination.

There are four elements needed to establish a case of reprisal in an EEO case:

1. The employee must be engaged in a protected activity.
2. The manager/agency who engages in the retaliatory behavior must be aware of the protected activity. Example: An individual claims retaliation for a non-selection because they had previously filed an EEO complaint while at another duty station. There must be evidence presented that the current agency had actual knowledge of the complainant having engaged in prior protected activity.
3. The employee must be subjected to some type of adverse treatment that adversely affects his/her terms of employment. Example: Non-selection, non-approval of leave when compared to other employees, negative performance evaluation, disparate treatment, etc.
4. There must be a demonstrable nexus or causal connection between the employee's protected activity and the prohibited personal practice suffered by that person. The measure most often used is the time between the protected activity and the adverse treatment, e.g., removal 3 months after initiating contact with an EEO officer established a nexus.

### **Reprisal for Whistleblowing**

The second type of retaliatory behavior that can be taken against an employee is when the employee provides allegations of improper government activity that does not involve discrimination. This second employee is sometimes referred to as a "whistleblower." Research has shown that this type of employee is not usually an angry or righteous person, but rather is normally a person who is just trying to "do the right thing."

For federal employees, disclosures of this type are usually protected by the Whistleblower Protection Act of 1989; however, there are over 32 separate whistleblower

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statutes that speak to specific areas of consideration, e.g., Federal Aviation Administration laws that deal with airline safety.

As demands for services grow and resources shrink, federal agencies must examine every aspect of their operations in order to achieve greater efficiency and effectiveness. Agency management cannot accomplish this goal alone – every employee plays, or should play, a role. In this regard, federal employees are obligated to “blow the whistle” on illegal or wasteful activities in the government.

Retaliation based on an employee’s protected disclosures of waste, fraud, and/or abuse can be investigated by the Office of Special Counsel, the Office of the Inspector General, or other investigative bodies.

The DOI Inspector General believes that employees who disclose information of potential waste, fraud or abuse should be free from fear of retaliation. In order to assist DOI employees with these concerns, the DOI OIG provides **interim** assistance through oversight, monitoring, and, if necessary, early intervention. This can take the form of contacting the appropriate Assistant Secretary and/or Bureau Director. The OIG can also assist employees in reporting their concerns to the Office of the Special Counsel (OSC).

OSC is an independent agency that interprets, investigates, and prosecutes cases of prohibited personnel practices brought by government employees. OSC has a hotline to accept complaints and can order any agency to investigate and report on information disclosed. OSC must then send an agency’s investigation, together with its input, to the President, Congress, and the Comptroller General. If it does not act on the submitted information, it must be returned to the complainant with an explanation of why.

If OSC or the OIG finds no fraud waste or abuse, an employee may still pursue a whistleblower claim if he/she suffers retaliation. This may be conducted through the Merit Systems Protection Board through an Individual Right of Action.

There several questions that arise when an employee contemplates “blowing the whistle” on alleged improper government activity.

### **What is Whistle blowing?**

A person contemplating “blowing the whistle” should have a **reasonable belief** that his/her disclosure is accurate. Never proceed with a complaint based merely on suspicion or “office gossip.” However, it is good to know that the law usually provides protection, even if the reported concerns ultimately prove to be unfounded.

The Whistleblower Protection Act, 5 U.S.C. § 2302 (b) (8), defines a whistleblower as an employee, former employee, or contractor who provides information he/she reasonably believes evidences waste, fraud, or abuse in the form of:

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- A violation of any law, rule, or regulation
- Gross mismanagement
- Gross waste of funds
- Abuse of authority
- Substantial and specific danger to public health or safety

Each of these elements help form a “protected disclosure.” While sounding straightforward and understandable, these definitions are subject to different interpretations in Federal Court System or at the Merit Systems Protection Board. In order to be considered a whistleblower under the law, a complainant must present evidence that he or she **reasonably believes** has occurred:

1. Violation of any law, rule or regulation. *Note:* This is a broad definition with a key ingredient – that the disclosure be substantive and not a mere disagreement or difference of opinion.
2. Gross mismanagement: must be more than “of little value” wrongdoing or negligence, e.g., taking fire crews off the line to save dollars and then win an award for coming in under budget.
3. Gross Waste of funds: must be more than debatable expenditures, e.g., buying 20 computers for staff of 5 stating that you expect to grow.
4. Abuse of authority: an arbitrary capricious use of power that benefits the abuser or others, e.g.; order a subordinate to retrieve cleaning from a laundry, shoes from shoe shop, or work on a their manager’s lake cabin while on govt. time.
5. Substantial and specific danger to public safety or health: A general statement like “you’re not doing enough for the environment” it not enough. It must be specific such as decisions were made to not disclose cracks in a dam in order to prevent embarrassment.

As in the EEO process, retaliation based on Whistleblowing activities also requires four ingredients:

1. The 1<sup>st</sup> ingredient is the protected disclosure, keeping in mind this could be protected conduct as well.
2. There must be a prohibited personnel action taken or threatened against the whistleblower, i.e., something BAD must happen to the discloser.

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There are many things that fall into this category, e.g., appointments, promotions, adverse actions or other disciplinary action or corrective action; details, transfers, reassignments; reinstatements; restorations; reemployment; performance evaluation; a decision concerning pay, benefits, or awards concerning education or training, if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation or other action; decision to order psychiatric testing or examination, any other significant change in duties, responsibilities or working conditions.

3. The supervisors/managers must have knowledge of the disclosure.
4. Complainant must be able to show that the personnel action he or she suffered is a result of their disclosures.

### **I. How do I “blow the whistle?”**

There are three common methods for federal Employees to blow the whistle:

- Report to a supervisor
- Contact the Inspector General
- Contact the Office of Special Counsel

### **II. Should I report wrongdoing to a Supervisor?**

Probably the most common and least formal method of whistle blowing is to report to a supervisor or higher-level agency official conduct that you reasonably believe evidences waste, fraud or abuse. You may not even think of yourself as a whistleblower, but if you are retaliated against after reporting the wrongdoing, you should investigate your right to protection from retaliation. But, if the reporting is part of your normal duties and responsibilities, you may not be protected when reporting to your supervisor.

### **III. Are my disclosures considered free speech under the 1<sup>st</sup> amendment and are they protected even if it is just part of doing my job?**

This question was recently answered by the U.S. Supreme Court in a 5-4 decision (*Garcetti V. Ceballos*) where the court decided that employees must be acting as private citizens to receive 1<sup>st</sup> amendment protection, i.e., off the job. Employees are not acting as private citizens while performing their job duties, i.e., the boss can control what is said on the job, but not what the employee says on matters of public concern as a private citizen.

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NOTE: this ruling applies to employees when they seek protection from retaliation under the 1<sup>st</sup> amendment. Employees will still have protection

under specific laws to include the Inspector General Act, and 32 other Federal laws specific to certain agencies like the Environmental Protection Agency, Department of Labor or the Federal Aviation Administration.

### **IV. Should I report wrongdoing to the Inspector General's Office?**

Yes. The IG may or may not investigate your allegations because of its investigative discretion, but you never lose your protected whistleblower status if you contact the IG, your supervisor knows and you received a prohibited personnel practice based on your disclosures.

### **V. Should I keep my disclosure confidential?**

Every person will have to make this decision. If you are concerned you will be retaliated against for providing information, you should take steps to protect the confidentiality of the disclosure. For a confidential Whistleblower, it could be hard to prove retaliation if the offending management officials persuasively testify they did not know of the whistle blowing.

## **Title II - REPORTING REQUIRMENTS**

This part of the No Fear Act requires that, on an annual basis, specific information is provided to Congress, the Attorney General, and the Congressional Chairperson of the respective Departmental Appropriations Committees. The information consists of:

- The number and status of cases arising under anti-discrimination and whistleblower laws.
- The amount of funds to be repaid to the U.S. Treasury as a result of Federal Court ordered awards or settlements.
- The agency policy for disciplinary actions against employees who discriminate or commit other prohibited practices.
- The number of employees disciplined.

In addition, this information will also be placed on the Internet and provide a public "Scorecard" on how the Department of Interior is complying with these issues. For example, after paying out \$2.1 million dollars in awards, there have been no instances of discipline reported. While there may be many reasons for this occurrence and while it may be understandable to see the difficulty in providing discipline to responsible managing officials because of the term "settlement"; there will be cases where actual discrimination is found and the department will have to decide how to deal with the

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responsible officials. The message contained in this public data is that there is clearly some fault (\$2.1 million in settlements) but no culpability.

The intent of the No Fear Act is to provide a public accounting of how the Department of Interior is responding to its responsibilities in this area. Another possible result of publicizing this type of data is the effect it may have on DOI's search for its future youthful workforce. Today's computer savvy job applicants will be visiting DOI websites and obtain perceptions regarding discrimination or retaliation within the DOI. They may engage in a comparative analysis of the DOI and other Federal agencies in order to make a more informed decision on where they will seek Federal employment.

### **Title II - REPORTING REQUIREMENTS Cont'd**

This report must also contain:

- An analysis of what Bureaus had the most violations and why
- Any adjustment to Department financial status in order to comply with the reimbursement requirement under the Act.
- Both the **Office of Personnel Management** and the **General Accounting Office** will be providing reports based on the No Fear Data. One GAO study is tracking costs incurred by the Department of Justice in defending discrimination and whistleblower cases on behalf of client departments. This could lead to charging client departments for the time spent by DOJ attorneys on discrimination or retaliation cases. This would add to the departments' overall cost for settlements.

### **FINAL CONSIDERATIONS**

The posting of the data on a public web site still leaves several issues to be considered by the Department of Interior.

- Currently only Federal Court ordered reimbursements to the Treasury are tracked.
- However, the DOI engages in many other types of settlement actions which are not tracked. It is unclear how many different types of settlement agreements are used by the various DOI agencies. There is no comprehensive system in place to determine what levels of approval are needed or what reporting requirements are mandatory. There is no single data collection point to provide DOI Executive Management a complete understanding of this issue, although the Office of Civil Rights is developing such a system.

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Discrimination and Retaliation have no place at any Federal workplace. The No Fear Act and Whistleblower Protection Act are two instruments that are intended to ensure good

government. As managers, we must consider how we will deal with staff that engages in the Protected Activities of the EEO process and the Whistleblower process.

We must be able to have an answer for a scenario such as follows: Imagine the Secretary of Interior appearing before its respective appropriations committee and requesting a \$60 million supplemental appropriation. Then imagine a Committee Chairman informing the Secretary that they will receive \$58 million because the DOI has paid out \$2 million in discrimination and retaliation settlements during the previous year. Imagine the Secretary going to the appropriate bureau assistant secretary and stating, “I’m taking \$200K from your budget” or “you’re not getting the additional \$200K you asked for”. This scenario is conceivable. Congress wanted something to enhance the level of accountability for all Federal Agencies. It chose a public airing of our EEO and Whistleblower retaliation record and forced us to deal with ourselves through our budgets.

In order to achieve a workplace free of discrimination and retaliation, the Department must engage in accurate reporting of this type of activity; provide discipline when necessary; provide necessary training and promote a transparent process when dealing with these two issues. Such a plan will send a message to employees and the public that discrimination, retaliation and harassment will not be tolerated at the Department of Interior.

**ETHICAL DILEMMAS**  
**Stephanie Langseth**

**Part 1:**

- How can Knowledge of, and Adherence to, the Standards of Conduct Lead to an Improved Workplace?
- Website Addresses for the Standards of Conduct, and Related Criminal Statutes

**Part 2:**

- Obligations of Public Service

**Part 3:**

- Why is Ethics Important to the Federal Government?
- Why is Ethics Important to the BLM?

**Part 4:**

- Seeking Employment

**Part 5:**

- Fundraising

**Part 6:**

- Traveling on Behalf of the BLM – 31 USC 1353

**Part 7:**

- Serving as Officers in Outside Organizations

**Part 8:**

- Conclusion and Contact Information

**PART 1.**

**How Can Knowledge of, and Adherence to, the Standards of Conduct Lead to an Improved Workplace?**

Government-wide Standards of Conduct are the primary “rules of the road” for the Federal workplace. They describe rules regarding such topics as: acceptance of gifts; use of Government time, information, and property; conflicting financial interests; outside employment; teaching, speaking, and writing; post employment; seeking employment; serving as officers in outside organizations; serving as an expert witness; use of official title and affiliation; nepotism; fundraising; financial disclosure reporting requirements; etc.

Some of the best ways for you to avoid problems in the workplace is for you to:

- Know what the rules are;
- Clearly communicate to employees what is expected of them;
- Encourage employees to know the rules;
- Administer the rules “fairly and equitably”;
- Avoid showing preferential treatment to employees in terms of opportunities for training, promotions, use of credit hours or overtime, to obtain credit hours or overtime, work at home, distribution of awards, etc.
- Deal with problems while they are still “little”; don’t let problems fester.
- **ASK QUESTIONS!!! THERE IS NO SUCH THING AS A DUMB ETHICS QUESTION!!**

Following this prescription may help you to avoid performance and conduct-based actions, EEO complaints, grievances, Whistleblower complaints; IG investigations; and allegations of prohibited personnel practices.

**REMEMBER THAT IGNORANCE OF THE ETHICS RULES AND REGULATIONS IS NO EXCUSE!**

**Website Addresses for the Standards of Conduct, and Related Criminal Statutes**

To learn more about the Standards of Conduct:

- <http://www.doi.gov/ethics/docs/standards2635.pdf> (the regulations)
- <http://www.doi.gov/ethics/docs/eg02unbooked.pdf> (a user-friendly summary of the Standards of Conduct)

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To learn more about the Department of the Interior's Supplemental Standard of Conduct:

- [http://www.access.gpo.gov/nara/cfr/waisidx\\_06/5cfr3501\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/5cfr3501_06.html)

To learn more about ethics-related criminal statutes:

[http://www.usoge.gov/pages/laws\\_regs\\_fedreg\\_stats/statutes.html](http://www.usoge.gov/pages/laws_regs_fedreg_stats/statutes.html)

- 18 USC 201 – Bribery
- 18 USC 205 – Representing Anyone Other than the Government
- 18 USC 207 – Post Employment (regulations)
- 18 USC 207 – Post Employment (user-friendly summary of the regulations):  
[http://www.usoge.gov/pages/daeograms/dgr\\_files/2004/do04023a.txt](http://www.usoge.gov/pages/daeograms/dgr_files/2004/do04023a.txt)
- 18 USC 208 – Financial Conflict of Interest
- 18 USC 209 – Dual Compensation

**Part 2.**

**BASIC OBLIGATIONS OF PUBLIC SERVICE**

(Executive Order 12674, as amended, and 5 C.F.R. § 2635.101)

1. Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
2. Employees shall not hold financial interests that conflict with the conscientious performance of duty.
3. Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
4. An employee shall not, except for certain permitted exceptions, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
5. Employees shall put forth honest effort in the performance of their duties.
6. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
7. Employees shall not use public office for private gain.

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8. Employees shall act impartially and not give preferential treatment to any private organization or individual.
9. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
12. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those – such as Federal, State, or local taxes – that are imposed by law.
13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards.

**Part 3.**

**Why is Ethics Important to the Federal Government?**

Ethical standards have been put into place on a Government-wide basis to ensure that the public can have complete confidence in the integrity of the Federal Government. One of the most basic ethics principles is that: “Public Service is a Public Trust”. We need to remember that we work for, receive our paychecks from, and are accountable to the public.

**Why is Ethics Important to the BLM?**

Ethical standards are important to the BLM to assure the public of the impartiality and neutrality of BLM’s decision-making processes when we approve grazing permits, process applications for permits to drill, grant rights-of-way, prepare EAs and EISs, Area Management Plans, etc. With BLM’s multi-use mission and multiple stakeholders and partners, we want to do our best to ensure that the needs of these multiple parties are fairly and equally evaluated, and that preferential treatment will not be given to any organizations or individuals.

**PART 4.**

**Seeking Employment**

**The situation...**

A BLM Geologist, Tom, has been working in his BLM capacity on a number of specific projects involving a local mining company. The projects have included reviewing bond cost estimates, plans for a gravel pit expansion, and numerous permit applications.

The manager of the mining company is impressed with Tom’s work, and told him that he would be interested in discussing employment opportunities with him.

Tom said that, since he is currently working on BLM projects related to the mining company, he can’t talk to him at this time, but he might be interested in talking to him later.

**Part 4. Seeking Employment (continued)**

**Question #1.** Per ethics regulations, has Tom begun employment negotiations with the mining company?

**Answer:**

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**Question #2.** If Tom is interested in talking to the mining company manager about employment, what actions, if any, should he take?

**Answer:**

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For additional information on Seeking Employment:

[http://a257.g.akamaitech.net/7/257/2422/01feb20061500/edocket.access.gpo.gov/cfr\\_2006/janqtr/5cfr2635.604.htm](http://a257.g.akamaitech.net/7/257/2422/01feb20061500/edocket.access.gpo.gov/cfr_2006/janqtr/5cfr2635.604.htm)

**Part 5. Fundraising**

**Question #3.** It is the annual season for the conduct of the Combined Federal Campaign (CFC). Your CFC key workers have proposed to ask local hotels, restaurants, and other businesses for prizes that can be used in support of the campaign. They are proposing to sell tickets for opportunities to win the prizes. The proposed ticket costs are \$1 each or 7 tickets for \$5. What problems, if any, do you see with these plans?

**Answer:**

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**Part 5. Fundraising (continued)**

**Question #4.** Due to the large numbers of cancer survivors in your local office, key-workers are proposing that all fundraising proceeds go to the American Cancer Society. Is there a problem with this proposal?

**Answer:**

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**Question #5.** Your local Employee Association wants to hold a silent auction, with the proceeds going to the General Fund of the CFC. What problems, if any, are there with this plan?

**Answer:**

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**Regarding Employee Associations...**

If you are going to have one, it is highly recommended that you develop an agreement between the Association and Management outlining what Government facilities and equipment can or cannot be used (e-mail, conference rooms, computers, fax machines); when these facilities and equipment can be used (non-duty times only?); under what conditions fundraisers will/will not be conducted; what will be done with the proceeds of the fundraisers; etc. You also don't want to set up conditions where there could be claims of misuse of collected funds, so Management should encourage the Employee Association to establish a solid bookkeeping, accounting, or auditing system.

For additional information on Fundraising:

<http://www.doi.gov/ethics/fundraising.html> (Departmental guidance)

[http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr\\_2001/janqtr/5cfr950.102.htm](http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2001/janqtr/5cfr950.102.htm) (the regulations)

**Part 6. Traveling on Behalf of the BLM – 31 USC 1353**

- It is normally expected that official BLM travel will be paid for through the use of appropriated funds. If the Bureau supplements appropriations from outside entities, we must have a specific statutory authority that permits the Bureau to accept those funds.
- There is a special statutory authority called 31 USC 1353 that permits Federal agencies to be reimbursed for travel expenses from non-Federal sources for attendance at meetings, conferences, training seminars, and similar events. The authority can't be used to accept reimbursement of travel expenses for field work, site visits, and other ongoing BLM work for which the Bureau receives appropriated funds. The authority permits the acceptance of travel and lodging expenses, meals, and registration fees for the meetings and conferences.
- A form DI-2000 should be filled out and approved **in advance** of the travel, and can be approved by the same official who has authority to approve travel. A copy of the form should be sent to your servicing Assistant Ethics Counselor, because we are required to report the acceptance of these travel expenses to the Department, who forwards them on to the Office of Government Ethics. The form is a two-page form, and is not as complicated as employees seem to think

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that it is. It is no more difficult to fill out than a travel authorization form. The form is not discretionary; if the Bureau wants to accept the travel reimbursement, the form needs to be filled out.

- Normally, the BLM pays for the travel expenses, and then the BLM is reimbursed by the outside organization after the travel has been completed. The check should be made out to the BLM, not the employee. If an organization is not able to, or willing, to write a check to the BLM, we should pay for the trip ourselves. In-kind expenses may also be accepted. For example, an organization can obtain an employee's airline ticket, pay directly for the hotel expenses and meals, etc.
- A basic conflict-of-interest analysis should be performed before the travel expenses are accepted. If, by accepting the travel reimbursement, a reasonable person with knowledge of the relevant facts could question BLM impartiality in an upcoming matter, we should not accept the travel expenses. For example, if the BLM is getting ready to award assistance funding to the organization that is offering to pay an employee's travel expenses, and the BLM employee is involved in the award process, the travel funds should not be accepted, and the BLM should pay the expenses for the trip.

So, let's try a few questions concerning the use of this authority...

### **Part 6. Traveling on Behalf of the BLM (continued)**

#### **Question #6.**

Samantha has been asked to present a lecture on behalf of the BLM at the annual meeting of the New Mexico Chapter of the Geological Society of America. Samantha works as a Geologist for the BLM, and the information exchange that would occur by presenting the lecture would be to the benefit of the BLM.

The Division of Natural Resources for the State of New Mexico has offered to pay for Samantha's airfare, lodging, meals, registration fee, and a speaking fee for the meeting. They made this offer because Samantha has worked on a number of BLM projects in conjunction with the Division of Natural Resources.

The airfare, lodging, and registration fee are being provided "in-kind" (the organization is leaving a ticket at the airport, and directly paying for the lodging and registration fee). The organization wants to give Samantha a personal check for the meals and the speaking fee.



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BLM (a Departmental requirement), **prior to** the commencement of service as an officer of the organization.

- A sample MOU and waiver can be found at: <http://www.doi.gov/ethics/docs/officer.html>. However, you are encouraged to use this information as guidance only, and to provide as much specificity about your involvement with the outside organization as possible.
- What are you really trying to accomplish by working with the outside organization? Exchange information about BLM goals and objectives, as well as learn about those of the outside organization? If so, you may not need to serve as an officer or board member to fulfill the objectives. Instead, consider serving in non-fiduciary positions such as:
  - A technical representative;
  - A liaison; or
  - A member of a committee.

When serving in one of these less formal roles, chances for inadvertent violation of related criminal statutes is lessened.

- You cannot serve “two masters”. When you are using Government time and resources to support service in an outside organization as an officer or board member, you are there as a BLM representative and are primarily representing the interests of the BLM.
- Most of the criminal statutes we have talked about today are applicable whether you are on or off duty. Merely taking leave or otherwise performing the duties of an officer on non-duty time to avoid developing an MOU and waiver will not absolve you of inadvertent violations of applicable criminal statutes. If you are representing BLM views, interests, and positions while serving as an officer or board member of an outside organization, whether on or off duty, get an MOU and waiver developed and approved before you start your service as an officer, not after. The MOU and waiver are **for your legal protection**. Don’t play games with this process.

So, let’s try a question on this subject...

### **Question # 7.**

A BLM Wildlife Biologist, Kristin, has been asked in her BLM capacity to become treasurer of the Snowy Plover Preservation Society. The relationship between the BLM and the outside organization is to the benefit of the BLM, and her supervisor supports



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okay. A list of servicing assistant ethics counselors can be found at:  
<http://web.blm.gov/internal/wo-700/wo710/ethicsContacts.html>

- Become familiar with the Standards of Conduct, and encourage your employees to do the same. Clearly communicate to employees what is expected of them. Administer the rules “fairly and equitably”.
- Consider even the “appearance” of your actions. If an action is technically correct, but by taking it, your impartiality or that of the BLM could be questioned, you should reconsider taking that action.
- Continue to ask questions. There is no such thing as a dumb ethics question.
- Set a good example for your employees. They are watching you more frequently than you think that they are. If you follow the rules, they are going to be more likely to do so as well.