

Subject: FHWAANTI-HARASSMENT PROCESS

1. PURPOSE

The Federal Highway Administration (FHWA) remains committed to providing a work environment free from harassment, to preventing harassing conduct, and to stopping such conduct as early as possible, before it can become pervasive or severe. Therefore, it is FHWA policy to take immediate and appropriate action when the Agency is made aware of allegations of harassment or determines that harassing conduct has occurred. This document sets forth the process within FHWA to address allegations of harassment.

The purpose of this process is to:

1. Demonstrate FHWA's commitment to a work environment that is welcoming to all employees.
2. Provide a neutral person to whom employees can report harassment and be confident that their allegations will be referred for serious consideration by someone in management. This person shall have ample access to high level Agency executives with authority to ensure there is a prompt inquiry of harassment allegations and appropriate action is taken in the event allegations of harassment are substantiated;
3. Ensure prompt, thorough, and impartial inquiry of employee allegations of harassment and to ensure that interim relief is provided when appropriate;
4. Ensure that when allegations of harassment are substantiated, FHWA management makes prompt changes to the work environment that stop the harassment from continuing to occur, and if appropriate, takes disciplinary action against the individual(s) responsible for the harassment;
5. Ensure that individuals who are the target of harassment, who allege harassment, or who provide information about alleged harassment as a witness or otherwise, will be protected from retaliation;
6. Track trends of harassment allegations within the Agency so that additional training or facilitation can be provided to decrease harassment incidents;

7. In coordination with the Human Resources (HR) Employee Relations Team and the Office of Chief Counsel (HCC), to provide FHWA executive leadership with unbiased information regarding harassment trends and situations within the Agency to inform planning processes and decision-making.

2. BACKGROUND

The Anti-Harassment Process (Process) provides an expedited, effective procedure to encourage employees to come forward when they feel they are experiencing harassing conduct. The procedures established in the Process are distinct from the Equal Employment Opportunity (EEO) procedures, and Employee Relations Process. The purpose of the EEO procedures and complaint process is to provide remedial relief to employees affected by discrimination and harassment, while the purpose of this Process is to provide an expedited process for reviewing allegations of harassing conduct, stopping further incidents of harassing conduct, and taking corrective action, where appropriate.

The FHWA will not wait for inappropriate or harassing conduct to become severe or pervasive before taking corrective action. Conduct that does not rise to the level of unlawful harassment actionable under Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008; the Genetic Information Non-Discrimination Act of 2008; or Executive Order 11478, EEO in the Federal Government, as amended by Executive Order 13087 and Executive Order 13672, is subject to corrective action and serious consequences, up to and including termination of employment, where appropriate, in accordance with law and merit systems principles.

3. DEFINITION

Harassment is a serious matter and is unacceptable under any circumstances. Examples of harassing conduct that are prohibited include but are not limited to:

1. Conduct that denigrates or show hostility or aversion to an individual because of race, color, sex, national origin, religion, age, disability, genetic information, sexual orientation or gender identity, including sexual harassment.
2. Conduct that denigrates or show hostility or aversion to an individual based on retaliation for engaging in protected activity.
3. Unwanted or uninvited touching, acts of physical violence, actual, implied, or veiled threats of violence, as well as making inappropriate and offensive statements that disrupt the workplace, even if they fail to reach the level of unlawful harassment.
4. Whether in-person or through other forms of electronic, online, or social media communication:
 - a. Using epithets, insults, slurs, negative stereotypes or threats, intimidation, or other acts that a reasonable person would find offensive (even if claimed to be jokes or pranks) and that may relate to an individual's protected characteristics or protected status;

- b. Displaying or sharing offensive written or graphic material displayed physically or electronically that denigrates or shows ill will or aversion toward an individual or group;
- c. Making unwelcome sexual gestures or overtures, and unwanted or uninvited touching or attention of a sexual nature;
- d. Making a statement that rejection of gestures, overtures, touching, or attention of a sexual nature will affect appointments, assignments, promotions, transfers, or evaluations;
- e. Language, gestures, leering, or body language that a reasonable person would find inappropriately suggestive, insulting, intimidating, demeaning, offensive, or discriminatory (race, gender, or other);
- f. Teasing, mimicking, or repeatedly commenting on an individual's physical or mental ability, accent, or protected status;
- g. Making or sharing comments, jokes, or suggestions about an individual's protected characteristics or protected status that a reasonable person would find inappropriate and offensive;
- h. Commenting on an individual's body or sexual characteristics in a manner that a reasonable person would find inappropriate and offensive;
- i. Displaying nude or sexually suggestive objects, pictures, images, or cartoons or communications of a sexually suggestive nature;
- J. Continuing harassing conduct after a co-worker has objected;
- k. Retaliating against an individual who raises or participates in reporting an allegation of harassment, or objects to unprofessional conduct; or
- l. Engaging in conduct or communication (in-person or electronic) that a reasonable person would consider bullying, intimidating, threatening, or negatively impacting the work environment.

3.1. What May Not Be Harassment:

In addition to understanding what harassment is, it is important to understand what it is not. Harassment should be distinguished from management's legitimate efforts to supervise employee time, attendance, telework, conduct, and work performance. Negative feedback or action from management on these topics, while sometimes unpleasant for the employee, is not necessarily harassment. Similarly, an occasional misunderstanding between employees because of individual or group differences in how they communicate is not necessarily harassment, even if it makes one or both employees uncomfortable. Examples of appropriate supervisory interactions and actions include but are not limited to the following:

- Supervisor/manager requests for status updates on duties or assignments;
- Performance feedback concerning missed deadlines or deficient quality work assignments;
- Discussions concerning inappropriate behavior such as rudeness, discourteousness, using offensive language and/or being disruptive to co-workers or customers;
- Inquiries regarding misconduct such as tardiness, absences from the workplace without approval, or improper use of leave;

- Discussions/inquiries concerning a failure to respond to management requests and/or a lack of responsiveness during telework hours, etc.;
- Discussions, reminders, or feedback regarding administrative responsibilities, such as submission of leave requests and timecard information, calendar updates , or completion of required training; or
- Discussions/feedback/decisions regarding within-grade increases or career-ladder promotions.

This list of appropriate supervisory interactions and actions does not mean that these types of interactions or actions, when coupled with instances of clearly unacceptable behavior, cannot constitute harassment. Supervisory actions and interactions, however, always will be considered within the full context of a given situation, which includes a recognition of the supervisor's responsibility to perform supervisory duties.

4. SCOPE

Harassment prohibited by FHWA policy includes not only legally actionable harassment based on membership in a protected class (that is, race, color, religion, national origin, age (40 and over) sex (including gender identity, sexual orientation or pregnancy), disability, genetic information, or based on prior EEO activity, but also prohibited behavior that may not have an EEO basis, or may be limited to isolated incident(s) that may not be severe or pervasive. Harassment allegations can be raised with the Anti-Harassment Coordinator whether or not the alleged victim is engaged in the EEO process, and/or the Employee Relations Process.

4.1. What Allegations May Not Be Within the Scope of the Program:

Based on the procedures below, the FHWA Anti-Harassment Coordinator may decline to proceed with an allegation that is:

- Duplicative of a prior inquiry that resulted in the Agency making a determination that no actionable harassment occurred; or
- The subject of management action (for example, proposed discipline) that has been coordinated with both HR and HCC, with their concurrence; in this instance the allegation may be excluded from the process if the Anti-Harassment Coordinator ascertains the Agency has already determined through internal coordination, and therefore, has taken a corporate position, that this is a legitimate management action and not harassment; or
- Based solely on an incident where the individual accused of harassment (the Respondent) was reporting possible harassment (because the Agency has encouraged such reports and has agreed there will be no retaliation for such reports); or
- Based solely on the work performed in the anti-harassment fact-finding process or because of a decision regarding a prior harassment allegation.

5. RESPONSIBILITIES

The FHWA can correct harassing conduct only if it is aware of the behavior. Harassing conduct is to be promptly reported to a supervisor, management official, the FHWA Anti-Harassment Coordinator, the Office of Human Resource Management Employee Relations (ER) Division or the Internal EEO Program Manager. Employees are not required to report allegations of harassing conduct to their immediate supervisor when the supervisor is the alleged harasser. Anyone impacted may report an incident of alleged harassing conduct, regardless of whether the conduct targeted the reporting individual.

5.1. HCR is responsible for :

- Designating a FHWA Anti-Harassment Coordinator.
- Oversight of the conduct of inquiries into allegations of harassing conduct.
- Supporting the effective implementation of the Process.
- Ensuring the Process is available and accessible to all FHWA employees.
- Advising managers and supervisors on appropriate actions and penalties for harassing conduct in the workplace.
- Advising managers and supervisors on options for interim relief for individuals alleging harassing conduct.
- Providing training, policy guidance, direction, and support to FHWA employees, managers, and supervisors on the prevention of harassing conduct.

5.2. FHWA Leadership is responsible for:

- Promoting a climate of professionalism and civility.
- Ensuring that the Process is implemented to address allegations of harassing conduct in a timely, impartial, and efficient manner.
- Holding managers and supervisors accountable for addressing allegations of harassing conduct, including the prompt (within 2 work days) initiation, thorough and impartial inquiries, and taking immediate corrective action, if appropriate.
- Ensuring that supervisors and managers are aware of appropriate penalties and disciplinary action for substantiated allegations of harassing conduct.
- Maintaining records and related documents on harassment complaints, inquiries, and outcomes in accordance with FHWA policy and guidance.

5.3. FHWA Supervisors and managers are responsible for:

- Maintaining a workplace free of harassing conduct and fostering a workplace culture of civility and professionalism.
- Communicating managerial responsibilities to act on allegations of harassing conduct.
- Acting promptly and appropriately to prevent harassing conduct and retaliation against those who report alleged harassing conduct.
- Immediately reporting (within 2 work days), to the designated official, any incident of harassing conduct witnessed or otherwise brought to their attention.
- Taking immediate action, if appropriate, to prevent or mitigate harassing conduct pending the outcome of an inquiry into the allegations.
- Taking prompt and appropriate corrective, remedial, or disciplinary action against

employees found to have engaged in harassing conduct and against persons who failed to take appropriate measures to prevent, eliminate, or correct such harassing conduct.

- Taking steps to prevent retaliation against employees who complain of harassing conduct or who conduct, assist or participate in the inquiries into allegations of harassing conduct.
- Maintaining confidentiality regarding the identity of those individuals reporting allegations of harassing conduct, consistent with the need to investigate alleged incidents of harassing conduct, as required under applicable laws, statutes, and policies.
- Providing interim relief to alleged victims of harassing conduct, pending the outcome of an inquiry to ensure that further misconduct does not occur.
- Knowing what resources and assistance are available to address harassing conduct in the workplace.
- Attending anti-harassment training required by FHWA.

5.4. Each FHWA employee is responsible for:

- Complying with all the requirements of the Process.
- Behaving professionally and civilly in the workplace, including during times of disagreement.
- Refraining from engaging in harassing conduct, as defined in the Process.
- Promptly reporting, pursuant to reporting procedures, any incident of alleged harassing conduct, whether the incident impacted the employee or another individual in the workplace.
- Cooperating in any inquiry concerning an allegation of harassing conduct, whether the incident impacted the employee or another individual in the workplace.
- Attending anti-harassment training mandated by FHWA.

5.5. The FHWA Anti-Harassment Coordinator is responsible for:

- Accepting for further inquiry and action, within the scope of this process, allegations of harassing conduct from all individuals, including non-employees.
- Conducting prompt, thorough, impartial inquiries, or delegating the responsibility for investigating complaints to the appropriate staff in FHWA.
- Collecting relevant information, and maintaining case files, in accordance with the Privacy Act of 1974.
- Overseeing the Process to ensure timelines are met, inquiries are thorough, and correction action is taken when appropriate;
- Raising issues of failure to comply with the Process, through her chain of command to the FHWA Executive Director.

6. PROCEDURES

6.1. Employee Actions When Reporting Allegations of Harassing Conduct

Any person may bring an allegation of harassment, including but not limited to an employee, a

contractor, an employee of FHWA partners (such as State department of transportation employees), an applicant for employment, or a member of the public.

An individual may bring the allegation concerning any FHWA employee, contractor, or FHWA partner (including employees of other U.S. Department of Transportation (DOT) modes), no matter whether the individual making the allegation is subordinate to, supervises, or is a peer or partner of the individual being accused. The process, including the remedies available, will vary based on differences in the employee status of the individual making the allegation and the individual accused of harassment.

Any person may raise an allegation of recent or ongoing harassment by contacting the Anti-Harassment Coordinator. The person bringing the allegation need not be the alleged victim of harassment but may be someone who is exposed to or otherwise aware of the alleged harassment.

6.2. Management Actions When Reporting Allegations of Harassing Conduct

The FHWA will take prompt corrective action in response to harassing conduct. A manager or supervisor who receives an allegation of harassing conduct from an employee must report the allegation to the FHWA Anti-Harassment Coordinator within 2 work days. It is mandatory that managers or supervisors resolve allegations of harassing conduct immediately with appropriate action to resolve such matters. A manager or supervisor who does not report an allegation of harassing conduct could face corrective action for failure to adhere to the provisions of this Process. Failure of managers and supervisors to address allegations of harassing conduct can result in disciplinary action.

If an allegation of harassment appears to potentially relate to allegations of discrimination under Title VII of the Civil Rights Act (based on a protected category), or to allegations of retaliation based on prior EEO participation, the manager or supervisor to whom the incident is reported should inform the reporting individual of their right to seek counseling from an EEO Counselor. The employee should be informed that initial contact with an EEO counselor must occur within 45 days from the date of the alleged harassing conduct.

When an incident of alleged harassing conduct is reported to the FHWA Anti-Harassment Coordinator, the Coordinator must consider whether that incident has been addressed outside the Process (for instance, if a manager or HR has already initiated an inquiry) or whether it should be addressed within the Process. In some instances, an employee may request that a manager or supervisor keep the employee's allegations of harassing conduct confidential. The responsible manager or supervisor must inform the employee that FHWA cannot guarantee complete confidentiality because it has an affirmative duty to prevent and correct harassing conduct. Any information obtained during an inquiry will be held in confidence and will only be disclosed on a "need to know" basis. Reprisal or retaliation against an individual for using this process or the EEO process will not be tolerated.

6.3. Process for Addressing Allegations of Harassment

- FHWA employees may report allegations of harassment to any of the following: (i) an individual in their supervisory chain; (ii) an Employee Relations Specialist within the HR

office; (iii) the EEO Program Manager within the Office of Civil Rights or other EEO counselor if the alleged harassment is based on membership in a protected group or on retaliation for prior EEO activity; or (iv) the Anti-Harassment Coordinator within the Office of Civil Rights pursuant to these procedures.

- Non -FHWA employees should report allegations of harassment to the Anti -Harassment Coordinator pursuant to these procedures, or to the EEO Program Manager or other EEO counselor if the alleged harassment is based on membership in a protected group or on retaliation for prior EEO activity.
- Any person may raise an allegation of harassment by contacting the Anti-Harassment Coordinator, or in his/her absence the Coordinator's Team Lead, who will act as the backup Coordinator. The person bringing the allegation need not be the alleged victim of harassment.
- There is no specific number of days within which such an allegation must be brought. To accept an allegation for action, the Coordinator must determine in his/her discretion that the alleged harassment is either recent or ongoing.
- Upon being contacted, the Coordinator will set up an intake meeting with the Aggrieved Person (AP).
- The intake meeting must occur on the day of or the day following the initial contact unless the AP is on leave. Otherwise, the intake meeting must occur within 1 day of the AP's return to work.
- At the time, the intake meeting is scheduled, the Coordinator must inform the AP that the Coordinator is neutral and not an advocate for either the AP or for the person who is accused (the "Respondent"). The Coordinator also must inform the AP that the allegation will be brought to management's attention.
- At the intake meeting, the Coordinator will:
 - (i) Explain the process and will listen in a non-judgmental and accepting manner to the allegations of the AP.
 - (ii) Prepare a written summary (preferably no more than one typed page, and often shorter) of the allegation(s) raised. The AP will be required to identify the individual(s) that he/she is claiming perpetrated the harassment (the "Respondent(s)").
 - (iii) Assist the AP in identifying the immediate supervisor(s) and the second-line supervisor of the Respondent(s).
 - (iv) Explain that FHWA will adhere to ethical standards in connection with any inquiry. And, for example, FHWA will avoid any action that may create a conflict of interest situation.
 - (v) Inform employees that use of the anti-harassment program does not prevent an individual from filing an EEO complaint of harassment or discrimination, or a grievance or modify any required timeframes for the use of such processes.
- The Coordinator will include the written summary and identifying information on an Anti-Harassment Coordination Initial Intake Form (see Appendix A or successor form) that he/she shall submit to the Decision-Maker following and on the same day as the intake meeting. The Coordinator shall remind the Decision-Maker that retaliation against

the AP or any participant in the inquiry for asserting allegations of harassment is strictly prohibited.

- Since the purpose of reporting allegations to the Coordinator is for management to take action to stop harassment and discipline those responsible if appropriate, harassment reported to the Coordinator is considered to be notice of harassment to management. Therefore, following and on the same day as the intake meeting, the Coordinator also will transmit the Intake Form to an individual designated within the FHWA HR and to an attorney designated by the FHWA HCC, whose prompt guidance and/or assistance may be needed regarding corrective measure(s) and discipline.
- Upon receiving the Intake Form, the Decision-Maker may share it with Unit leadership if he/she believes Unit leadership has a need to know, for example, for purposes of providing interim relief, determining who should be the Decision-Maker, or in preparation for conducting the management inquiry.
- After receiving the Intake Form, the Decision-Maker, in coordination with HR, and with the Coordinator and HCC if appropriate, should (a) make a determination whether his/her role(s) should be delegated; and (b) consider whether to offer interim relief, but otherwise should await Coordinator's decision whether the allegations are accepted prior to taking further action.
- Within 1 business day of providing the Intake Form to management, HR, and HCC, the Coordinator will obtain and consider information from management, HR, and HCC, as the Coordinator deems appropriate, to assist the Coordinator in determining whether the allegations should be accepted. This time may be extended by the Coordinator if the appropriate personnel are not available for consultation, but should occur as soon as possible, utilizing substitute personnel if necessary, to avoid a substantial delay. The Coordinator may consult with HCC in evaluating whether an allegation is appropriate for acceptance, but will make this decision independently. Decisions to dismiss the allegations must be reviewed and approved by the Coordinator's supervisory chain.
- If the Coordinator has decided to accept one or more of the allegations, the Coordinator shall make an additional determination whether (a) the facts of the incident(s) are undisputed or easily ascertained, and therefore a formal management inquiry is not necessary; or (b) the facts of the incidents are materially disputed or not easily ascertained, and therefore a formal management inquiry is necessary. No later than 2 business days after the intake meeting (unless extended by the Coordinator due to the unavailability of necessary personnel), the Coordinator will respond to the AP by email, either accepting or dismissing the allegation(s), and indicating whether a formal management inquiry must occur. The Coordinator will forward a copy of this email to the Decision-Maker, the HR designated representative, and the HCC designated representative.
- If the Coordinator dismisses one or more of the allegation(s), the Coordinator must provide a brief explanation of the reason for dismissal and should attach information (brochures, charts, Web links) indicating other possible avenues to address the employee's concerns.
- The Coordinator's decision on whether the allegations are within the scope of the process, and whether a formal management inquiry must occur, will be coordinated with the Coordinator's management chain prior to issuance, and, once issued, is final.

- If the allegation(s) are not accepted into the coordination process, due to the need to address every allegation of harassment received by management, the Decision-Maker still is required to take action on the allegation, apart from the process. The Decision-Maker shall coordinate with HR for guidance regarding his/her responsibilities in this regard. After the Decision-Maker addresses the non-accepted allegations, for reporting purposes, the Decision-Maker must send an email to the Coordinator summarizing any action, including a decision that no action is needed.

6.4. Conducting an Inquiry

- If an accepted allegation requires a formal inquiry, the Coordinator will conduct management inquiry or will appoint an individual trained in conducting management inquiries, (the "Fact-Finder") from the pool of individuals developed within FWHA for that purpose. The Fact-Finder shall collect facts relevant to the inquiry without providing a conclusion whether the allegations are substantiated or a recommendation regarding discipline or relief. The Fact-Finder shall prepare and present a fact-finding report to the Decision-Maker within six (6) business days of the notice. The fact-finding report may contain observations relevant to the credibility of witnesses. Due to the compressed time frame for the report, the report is not expected to be a lengthy polished work product, but is expected to contain a summary of the findings, and may contain documentary evidence and/or written witness statements, to the extent necessary to explain the views of various parties, or provide evidence regarding the incident(s) at issue.
- All deadlines in this process shall be extended accordingly during any time the AP is unavailable to participate in the intake meeting or inquiry, or not responsive to contact by the Coordinator, Fact-Finder, or Decision-Maker.
- The Decision-Maker shall coordinate with HR to consider interim relief, review the fact-finding documentation, and make a decision whether some or all of the allegations are substantiated within 10 days of receipt of the notice. If any allegations are substantiated, the Decision-Maker shall draft a plan of proposed relief for the AP, and the Respondent's supervisor, whether or not that person is the Decision-Maker, shall be informed of the substantiated allegations, including the fact-finding report, and shall draft a plan of proposed consequences for the Respondent. The Respondent's supervisory shall share his/her proposed consequences with the Decision-Maker.
- Within 15 business days of receipt of the notice, the Decision-Maker will provide the Coordinator with a written resolution document (Appendix B, or successor forms), indicating whether some or all of the allegations are substantiated, and, if any allegations are substantiated, the plan for relief and proposed consequences.
- The Coordinator will review the written resolution document within 2 business days of receipt and determine whether the inquiry and relief meet program requirements. If program requirements are not met, the Coordinator will follow up with the Decision-Maker seeking compliance with the Anti-Harassment Program. If compliance is not obtained or if the written resolution document is not received, the Coordinator and his/her direct supervisor and the Associate Administrator of Civil Rights will bring this to the attention of HCC, and the Associate Administrator for Administration (HAD-1), or if the allegation is within HAD-1 's areas of supervision, to the Executive Director or his/her designee.

- If program requirements have been met, the Coordinator will confirm by email to the Decision-Maker that the resolution document has been accepted by the Coordinator. If an allegation was not substantiated, the Coordinator will, via email, provide the AP a brief explanation of the reason for dismissal and attach information indicating other possible avenues to address the employee's concerns. A copy of this correspondence will be forwarded to the Decision-Maker, the Respondent's supervisor (if different from the Decision-Maker), the Respondent, the HR designee, and the HCC designee. If an allegation was substantiated, the Coordinator will, via email, notify the AP of the substantiated allegation and direct the AP to coordinate with his/her management regarding any relief to be provided. A copy of this correspondence will be forwarded to the Decision-Maker, the Respondent's supervisor (if different from the Decision-Maker), the HR designee, and the HCC designee.

6.5. Where an Inquiry Results in a Finding that Harassing Conduct Has Occurred

- If an allegation is substantiated, upon confirmation that the resolution document has been accepted, the Decision-Maker and the AP's supervisory chain (except for any Respondent) shall promptly proceed with providing relief to the AP.
- Relief shall be initiated within 3 business days of the acceptance of the resolution document and implemented within 10 calendar days of the acceptance of the resolution document.
- If an allegation is substantiated, upon confirmation that the resolution document has been accepted, the Decision-Maker and the Respondent's first-line supervisor shall promptly proceed proposing or providing consequences, including but not limited to counseling, training, a reprimand, or other discipline for the Respondent.
- The process for ascertaining and imposing consequences for the Respondent shall be initiated within 3 business days of the acceptance of the resolution document. The Decision-Maker shall coordinate with HR to ensure due process is provided, as in any other disciplinary action, with the Respondent's supervisor being the proposing official for more serious disciplinary actions. If there are multiple Respondents, the Decision-Maker will be the higher-ranking official and must coordinate with any other Respondents' supervisor regarding proposing or imposing of discipline. This is because, in the absence of a conflict, such discipline remains the first-line supervisor's responsibility. Once a decision has been made regarding consequences for the Respondent and any discipline or other consequences have been finalized, the Decision-Maker will submit a close-out form (to be developed) to the Coordinator, indicating the outcome of any consequences or disciplinary process. To the extent possible consistent with due process procedures, and discipline or other consequences shall be implemented within 60 calendar days of the acceptance of the resolution document.
- If the Respondent's supervisor fails to proceed with consequences consistent with the resolution document, or if the consequences ultimately imposed significantly depart from consistency with the resolution document, the Coordinator shall seek an explanation from the Respondent's supervisor, the deciding official for the disciplinary matter, and/or the Decision-Maker and his/her supervisor, as applicable. In some cases, the explanation will be sufficient to close the case (for instance, respondent left FHWA so no discipline imposed). If the Coordinator, in consultation with his/her supervisory chain has/have

concerns about the consequences, however, they will notify HCC, HAD-1, and the Executive Director or his/her designee of this decision by forwarding the close-out form.

- Should any of the individuals designated in this process become a Respondent in a matter, or otherwise need to be recused because of a conflict of interest, the duties of that person shall be delegated by his/her supervisor to another individual at the same or a higher level as the individual who must be recused.
- The Executive Director may delegate his/her responsibilities in a particular matter to another member of the SES.
- Based on the complexity of the case, the unavailability of essential witnesses' due to illness, leave, or travel, or other extenuating circumstances, the deadline for completion of the inquiry or the submission of the Resolution Document may be extended briefly if advance approval of the Coordinator is obtained. Such extensions are not preferred and should be granted sparingly, for a short a time as possible, and only after a showing of good cause.

7. DUTIES AND RESPONSIBILITIES OF THE DECISION-MAKER

- The Respondent's first-line supervisor usually, but not always, will serve as the Decision-Maker for purposes of this process. As detailed below, however, the Decision-Maker may sometimes be a person who is delegated that responsibility by the first-line supervisor, someone further up in the Respondent's chain of command, or someone appointed by the Executive Director. Unless appointed by the Executive Director, the Decision-Maker must be at a higher organizational level than the Respondent.
- When allegations allege more than one Respondent, if the Respondents are in the same chain of command, the first-line supervisor who is higher in the chain of command will be deemed the Decision-Maker for both Respondents.
- In cases where the Coordinator determines there are conflict of interest issues within the chain of command that the Coordinator believes will undermine the Agency's ability to conduct a management inquiry and/or a fair and impartial evaluation of the allegations, the Coordinator, with the concurrence of the Associate Administrator for the Office of Civil Rights, may request that the Executive Director appoint a different Decision-Maker who may be outside of the Respondent's chain of command.
- If a Decision-Maker, because of approved leave or work obligations will not be able to meet the required timelines for this process, he/she may delegate his/her responsibility to make a decision whether the allegations are substantiated, but may not delegate his/her responsibility for imposing consequences and /or providing relief, except, when necessary to meet time constraints, for interim relief.
- If the Respondent is not a DOT employee, the Coordinator shall refer the allegation(s) to the attention of the AP's first line and second line supervisors, who should seek assistance from the management chain of the individual alleged to be engaging in harassment (including engaging the Contracting Officer's Representative if the respondent is a contractor). It should be noted that the focus in addressing allegations against non-DOT respondents should be on stopping any ongoing harassment; discipline of the offender often is not within DOT's authority. This process therefore is somewhat abbreviated and, depending on the circumstances, some of the other steps outlined in this process may not apply. Within ten (10) business days of the referral, the non-DOT

Decision-Maker shall report the outcome of this referral to the Coordinator. If no response is received within the 10 days the Coordinator may elevate the non-- response through the Coordinator's leadership team to the Executive Director if necessary.

8. CLOSURE PROCESS

- Upon acceptance of the Resolution Document, if an allegation was not substantiated, the Coordinator will, via email, provide the AP a brief explanation of the reason for dismissal and attach information indicating other possible avenues to address the employee's concerns. The Coordinator will forward this email to the Decision-Maker, the Respondent's supervisor (if different from the Decision-Maker), the Respondent (if still an FHWA employee), the HR designee, and the HCC designee . If an allegation was substantiated, the Coordinator will notify the AP via email of the substantiated allegation and direct the AP to coordinate with his/her management regarding any relief to be provided. A copy of this correspondence will be forwarded to the Decision-Maker, the Respondent's supervisor (if different from the Decision-Maker), the HR designee, and the HCC designee.
- If one or more of the allegations is substantiated, the Decision-Maker, in coordination with the Respondent's first line supervisor, if different; will communicate the decision and corresponding consequences, if any, to the Respondent (if still an FHWA employee).

9. DATA COLLECTION AND THE OBLIGATION TO REPORT HARASSMENT

The Coordinator will track all allegations, resolutions, relief, and consequences, including discipline, on a fiscal year basis. This information shall be provided in a report to HCC, HAD -1, and the Executive Director annually for the previous fiscal year, with the report to be completed no later than 2 months following the end of the fiscal year (November 30).

- To facilitate such tracking, HR, supervisors to whom allegations are brought directly, and the EEO Program Manager shall, within 2 business days of such allegation, report an allegation of harassment to the Anti-Harassment Coordinator. In most situations, such allegations will go through the anti-harassment procedures set forth above, although supervisors/managers may in their discretion, elect to handle less complex allegations without going through the formal process. Upon request, the Coordinator will assist in designating a trained Fact-Finder for allegations that are not proceeding through the formal process. The Coordinator and management shall work together to decide which process to use to address allegations not brought to the Coordinator by the AP. The AP may volunteer or may be asked to provide input regarding his/her preferences regarding the process used, but his/her preference is neither dispositive nor presumptive.
- Executives, managers, supervisors, and team leads have an affirmative obligation to promptly (within 2 business days) report allegations of harassment to the Coordinator.

This reporting requirement applies regardless of whether the alleged victim of harassment desires the harassment to be reported and regardless of whether the alleged victim or the Respondent is within the management chain of the person with the reporting obligation. For instance, if an individual subject to this reporting requirement is approached by a friend in confidence regarding an alleged incident of harassment, they are required to tell the friend that they cannot keep that confidence but must report any allegations disclosed. Likewise, an individual with a reporting obligation must report incidents of alleged harassment that he/she witnesses.

- Executives, managers, supervisors, and team leads have an affirmative obligation to promptly take action under this policy to address allegations of harassment that are brought to them or of which they become aware.
- All FHWA employees are encouraged to promptly (within 2 business days) report alleged harassment of which they become aware, either to their own management, the management of the alleged victim, the management of the alleged Respondent, HR, or the Coordinator. Retaliation against individuals reporting alleged harassment, conducting an inquiry, or participating in the process as a witness or otherwise, is strictly prohibited.

10. TREND ANALYSIS

In addition to the annual analysis for FHWA, if at any time the Coordinator believes there is a trend of harassment in an office or a significant issue of harassment that is not being addressed, he/she may, through and with the knowledge of Associate Administrator of Civil Rights and his/her management, brief this issue to the Executive Director, HAD-1 and the Deputy Chief Counsel or designee. This report will separately enumerate and report on allegations against non-FHWA respondents.

Data from trend analysis will be used to target offices for training, outreach, and technical assistance. The FHWA understands that on annual basis Departmental Office of Civil Rights will also be analyzing this data in connection with the MD-715.

11. CONFIDENTIALITY AND NON-RETALIATION

Due to the importance of eliminating harassment in the workplace and promptly addressing harassment if it occurs, allegations of harassment are not anonymous.

To avoid chilling the reporting of harassment, however, confidentiality of individuals reporting harassment, alleged victims of harassment, and witnesses of harassment will be preserved by this process to the extent possible, consistent with the need to investigate and address harassment allegations.

Retaliation against individuals who are the target of harassment, who allege harassment, or who provide information about alleged harassment as a witness or otherwise, is prohibited and subject to disciplinary action.

12. RELATIONSHIP TO EEO COMPLAINT PROCESS

The Process is not exclusive, but can proceed concurrent with the EEO process. It is the policy of the FHWA to provide equal opportunity in Federal employment and to prohibit discrimination in employment based on race, color, religion, sex, national origin, age, disability, genetic information, or sexual orientation. Retaliation against any person(s) for opposing any of the practices made unlawful by the EEO laws is prohibited.

Employees and applicants for employment who allege employment discrimination must participate in the FHWA's EEO Counseling Program before filing a formal complaint. The purpose of the FHWA's EEO Counseling Program is to resolve allegations of workplace discrimination through traditional EEO counseling at the lowest level possible. Individuals (aggrieved persons) must seek EEO counseling within 45 days of the date of the alleged discriminatory act. The EEO Counselor has 30 days from the date of the aggrieved person's initial contact to attempt to resolve the matter. The EEO Counselor will meet with the aggrieved person and the responsible management official(s) to seek resolution. In certain circumstances, the counseling period may be extended for an additional 60 days; however, the entire counseling session must not exceed 90 days. When aggrieved persons participate in Alternative Dispute Resolution, the pre-complaint processing period will be 90 days.

EFFECTIVE DATE AND IMPLEMENTATION

This document is effective immediately upon signature.



Nicole R. Nason
Administrator
Federal Highway Administration

Date: 12/13/2019