

## FS Policy 205-4, Anti-Harassment Program

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### Executive Summary

This chapter provides policy and guidance to Bureau of the Fiscal Service (Fiscal Service) employees on preventing and eliminating all forms of discriminatorily harassing conduct in the workplace and the process for the Fiscal Service Anti-Harassment Program.

### Purpose

The purpose of this chapter is to ensure Fiscal Service takes all necessary steps to prevent all forms of discriminatorily harassing conduct (including sexual harassment) in the workplace and to respond quickly if such conduct occurs. This policy also sets forth the anti-harassment procedures for addressing allegations of all forms of harassment outside of the Equal Employment Opportunity complaint (EEO) and grievance processes.

This policy supplements, but does not replace, existing EEO complaint procedures under 29 C.F.R. Part 1614 and administrative or collective bargaining grievance procedures. The policy establishes an expedited process for reviewing allegations of harassment, effectively ending harassment, and taking appropriate disciplinary action that may or may not run concurrent to the EEO complaint process.

It is the policy of Fiscal Service to uphold a system of personnel management that ensures high standards of honesty, integrity, impartiality, and conduct. Harassment of any form is misconduct that compromises these standards. It weakens the employment relationship, debilitates morale, and jeopardizes the Fiscal Service's ability to meet its mission.

Harassment will not be tolerated. All reports of such behavior will be examined immediately. If Fiscal Service substantiates a harassment claim, the harasser will be subject to disciplinary or adverse action, up to and including removal.

### Scope

This procedure applies to all Fiscal Service employees, contractors, and vendors.

### References

- U.S. Equal Employment Opportunity Commission (EEOC), Equal Employment Opportunity Management Directive 715, October 1, 2003
- U.S. EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, No. 915.002 (6/18/99), EEOC Compliance Manual Section 615.11(a)
- Department of Treasury, Human Resources Issuance System, Chapter 900, Transmittal 06-003, dated August 28, 2006

- Department of Treasury, Human Resources Issuance System, Chapter 900, Transmittal 08-003, dated June 11, 2008
- Public Law No. 107-174, Section 303, 116 Stat 566-575, Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (NO FEAR Act)
- Title 5, U.S.C. Section 2302
- Title 7 of the Civil Rights Act of 1964
- Age Discrimination in Employment Act of 1967
- Americans with Disabilities Act, as amended
- Rehabilitation Act of 1973, as amended
- Title 2 of the Genetic Information Non-Discrimination Act of 2008 (GINA)
- Executive Order 13087
- Executive Order 13152
- 5 CFR Part 752, Adverse Actions

## **Responsibilities**

- A. **Commissioner**, through delegation to the EEO Officer, is responsible for administering the Fiscal Service Anti-Harassment program and ensuring compliance with this policy.
- B. **Senior Executives** will take the following steps to prevent and eliminate discriminatory harassment:
1. Ensure that Fiscal Service’s “zero tolerance” policy has been distributed to and is understood by all employees;
  2. Notify subordinate management officials and employees of the Department's "zero tolerance" policy as well as Fiscal Service's policy on harassment;
  3. Ensure that employees are informed of the avenues of redress open to them; and
  4. Ensure that employees understand that they may be subject to personal liability with regard to discriminatory harassment or inappropriate behavior, as well as ensuring that corrective and/or disciplinary action is taken in instances where either is substantiated.
- C. **All Supervisors and Managers** have the responsibility to:
1. Make clear that they will not tolerate any harassing behavior among their employees or contractors;
  2. Complete *Attachment A* when allegation of harassment is brought to their attention and submit to the Workforce Relations Branch (WRB);
  3. Initiate immediate and appropriate action, by contacting WRB when an allegation of harassment is brought to their attention;

4. Protect the confidentiality of the individual reporting harassment to the fullest extent possible;
5. Take prompt and immediate action to stop the behavior, and when appropriate, physically separate the alleged harasser from the aggrieved individual;
6. Resolve complaints of alleged discriminatory harassment fairly;
7. Take or recommend, as appropriate, swift corrective action whenever an allegation of harassment occurs, in order to ensure that future conduct does not rise to the level of a hostile working environment;
8. Counsel or take corrective action against employees or contractors who engage in inappropriate behavior that targets, stereotypes, ridicules, or embarrasses others; and
9. Not retaliate or discriminate against an employee for reporting harassment or for cooperating with any harassment investigation. Any such action will result in appropriate disciplinary action against the manager or supervisor.
10. Review the investigative materials produced by the WRB or Security Branch and propose disciplinary or adverse actions when appropriate.

**D. The EEO Officer** has the responsibility to:

1. Oversee the overall administration and technical oversight of the EEO Program and Fiscal Service Anti-Harassment Program;
2. Assure allegations of harassment are addressed swiftly and immediately;
3. Take immediate and appropriate action, by completing and submitting *Attachment A*, to WRB or Security Branch when an allegation of harassment is brought to his/her attention;
4. Protect the confidentiality of the individual reporting harassment to the fullest extent possible;
5. Determine the appropriate office to conduct administrative investigations when allegations of harassment are made in the EEO arena; and
6. Review administrative investigation summaries and proposed discipline.

**E. The Resolution Program Manager (RPM)** has the responsibility to:

1. Notify aggrieved individuals who contact the EEO Office about the administrative process that must occur when allegations of harassment are made, concurrent with and separate from the EEO process;

2. Immediately advise the EEO Officer when harassment allegations are made by completing and submitting *Attachment A* to the EEO Officer;
3. Protect the confidentiality of the individual reporting harassment to the fullest extent possible; and
4. Assign an EEO Counselor if the aggrieved individual wants to pursue the EEO process concurrent with the administrative process.

F. **EEO Counselors** have the responsibility to:

1. Counsel employees or applicants who file discriminatory harassment allegations in the informal EEO complaint process;
2. Notify aggrieved individuals who contact the EEO Office about the administrative process that must occur when allegations of harassment are made, concurrent with and separate from the EEO process;
3. Immediately advise the EEO Officer about harassment allegations by completing and submitting *Attachment A*; and
4. Protect the confidentiality of the individual reporting harassment to the fullest extent possible;

G. Based on the type of allegations, **WRB or Security Branch** has the responsibility to:

1. Conduct prompt, thorough, and impartial administrative investigations;
2. Investigate actions that may not violate the law, but violate this policy and address with appropriate recommendations, including potential disciplinary or adverse actions;
3. Protect the confidentiality of the individual reporting harassment to the fullest extent possible;
4. Inform the EEO Officer about the determinations and recommendations of the investigation;
5. Obtain the EEO Officer's feedback based on the results of the administrative investigation;
6. Make recommendations to management on the appropriate disciplinary action; and
7. Take steps to reassure victims that they will not be subject to further incidents of harassment or retaliation.

H. **All Employees and Contractors** have the responsibility to:

1. Make an effort to keep the workplace professional by avoiding situations or discussions of a sexual nature, and those involving protected group characteristics and refraining from harassing conduct;
  2. Report any incident (as experienced or witnessed) involving harassment without the fear of reprisal;
  3. Inform the offending individual directly, if comfortable doing so, that the behavior is inappropriate or unwelcome. When this is not feasible, or it is ineffective and the harassment continues, employees should report the conduct promptly to one of the following:
    - a. supervisor or manager;
    - b. union representative (if a bargaining unit employee);
    - c. WRB specialist in the Human Resources Operations Division (HROD);
    - d. Human Resources specialist;
    - e. EEO staff member in the Equal Employment Opportunity and Diversity Office (EEOD); or the
    - f. Discriminatory Harassment Hotline at 1-304-480-6527.
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1. Decide whether to file an EEO complaint with the EEOD and, if so, file it in a timely manner. To be timely, an EEOD representative must be contacted to initiate the EEO complaint process within 45 calendar days of the latest incident of harassment or the date of awareness of it. In certain circumstances, bargaining unit employees may elect to file a negotiated grievance, in lieu of filing an EEO complaint. To be timely, the grievance process must be initiated within 15 workdays of the incident or awareness of it. Employees who seek EEO counseling or file an EEO complaint about harassment directed at them have the right to remain anonymous; however should the employee pursue the formal complaint process it will be necessary to identify himself or herself;
  2. Comply with the provisions of this policy, be truthful, and cooperate with any investigation involving allegations of misconduct.
  3. Employees and Contractors who feel they have been harassed should report the incident. The Bureau of the Fiscal Service will protect the confidentiality of the individuals reporting harassment to the fullest extent possible; however, there may be occasions where complete confidentiality cannot be maintained in order for the investigator(s) to conduct a thorough inquiry of the matter. "Confidentiality" means that the details of an allegation of harassment are disclosed to specific persons on a need-to-know basis. When an employee alleges harassment to a management official, an inquiry must be conducted. Therefore, persons with a need to know will be notified of the allegations. In this regard, allegations of harassment cannot remain confidential between an employee and a management official, although the employee may remain anonymous under the conditions described in this policy.

4. Employees and Contractors who believe they have witnessed harassing behavior must report the incident. The Bureau of the Fiscal Service will protect the confidentiality of the individuals reporting harassment to the fullest extent possible.

## **Definitions**

- A. Aggrieved - The Fiscal Service employee/contractor who has contacted an EEO official alleging some form of prohibited discrimination.
- B. Bullying - unwanted, offensive or malicious behavior calculated to undermine, patronize, humiliate, intimidate, or demean the recipient. Bullying can range from face-to-face encounters to “cyber-bullying” and can occur on a peer-to-peer basis, as well as between a supervisor and subordinate.
- C. Harassment - Harassment is hostile or abusive conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, protected genetic information, parental status or protected EEO activity.
- D. Unlawful Harassment - Unlawful harassment includes unwelcome intimidation, ridicule, insult, or physical conduct (verbal, nonverbal or physical), that has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an offensive or hostile environment based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, protected genetic information, parental status or protected EEO activity (hereinafter referred to as protected groups) where:
  - 1) An employment decision affecting the employee is based upon the employee’s acceptance or rejection of such conduct; or
  - 2) The conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges of the employee’s employment, or otherwise creates an abusive work environment. This type of harassment typically does not involve personnel actions such as denial of promotion. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of unlawful harassment. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to a reasonable person. However, harassing conduct that is not unlawful may still serve as the basis for disciplinary action.

Examples of harassing conduct include, but are not limited to:

- a. Epithets, slurs, stereotyping or threatening, intimidating, or hostile acts that relate to race, color, religion, sex, national origin, age, disability, protected genetic information, sexual orientation or parental status, or to an individual's protected EEO activity;
- b. A practice or repeated instances of jokes or pranks that are hostile or demeaning and are based on an individual's protected group status;
- c. Written or graphic material that degrades or shows hostility or aversion toward an individual or group because of their protected group characteristics and is displayed on

- walls, bulletin boards or other locations, or is circulated in the workplace;
- d. The circulation or posting of electronic materials that show hostility toward individuals because of their protected status;
  - e. Acts of physical violence, and actual, implied, or veiled threats of violence. Any form or manner of threatening or provocative remarks or gestures in the workplace is prohibited;
  - f. A single utterance of an ethnic, sexual or racial epithet that offends an employee generally would not be severe enough to constitute unlawful harassment in violation of Title VII or other anti-discrimination statutes. However, it is the Fiscal Service's policy that such conduct is inappropriate in the workplace and will not be tolerated.

E. Sexual Harassment - Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct based on sex (whether or not it is sexual in nature) is a form of unlawful sex discrimination constituting sexual harassment when one or more of the following conditions exists:

1. Submission to the conduct is an implicit or explicit term or condition of employment;
  2. Submission to or rejection of the conduct is the basis for an employment decision affecting such individual; or
  3. The conduct has the purpose or effect of unreasonably interfering with work or creates an intimidating, hostile, or offensive work environment.
  4. Such conduct may include:
    - a. An employer or supervisor conditioning promotion, job assignments, or other tangible job benefits based on acquiescence to unwelcome sexual conduct, or penalizing an individual for refusing to participate in such conduct;
    - b. Sexist or stereotypical remarks about a person's clothing, body, appearance or activities;
    - c. Sexually oriented jokes, stories, remarks or discussions;
    - d. Descriptions of sexual acts;
    - e. Posting or displaying sexually graphic pictures anywhere in the workplace;
    - f. Deliberately touching, pinching, patting, or giving inappropriate looks to another person;
    - g. Pressure for dates;
    - h. Unwelcome telephone calls, e-mail messages, social network postings or letters of a sexual nature; or
    - i. Demands for sexual favors.
1. In sexual harassment, the harasser may be male or female, and the victim may be of the opposite sex or the same sex as the harasser.
  2. Even a consensual relationship between the harasser and the victim may involve sexual harassment. For example, if the victim agrees to sexual behavior out of fear of retaliation,

the conduct of the other party may still constitute sexual harassment despite the victim's consent. The focus is on whether the conduct was unwelcome, not consensual.

- F. **Conduct Covered** – The conduct covered by this policy is broader than the legal definition of unlawful harassment. It includes hostile or abusive conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, protected genetic information, parental status or retaliation, even if the conduct has not risen to the level where the conduct becomes sufficiently severe and pervasive so as to alter the conditions of employment. The goal of this policy is to avoid or minimize harm to any employee subjected to unwelcome, hostile or abusive conduct based on protected group status by ensuring appropriate officials are notified of and have the opportunity to promptly correct such conduct.
- G. **Conduct Not Covered** - Mere characterization of conduct as "harassment" does not bring that conduct under the umbrella of this policy. If an employee complains of alleged mistreatment which, as described by the complaining employee, fails to meet this policy's definition of "harassment," it will not result in a duty to report the conduct or a duty on the part of management or the EEO office to respond according to the terms of this policy.

However, it is the duty of the supervisor to take such allegations seriously, investigate, and document the circumstances that gave rise to the complaint. If further action is necessary (e.g., discipline), the supervisor should contact a WRB specialist.

### **Informal EEO Complaint Procedures**

- A. All harassment based on a protected category is a form of discrimination. Consequently, individuals who believe that they are victims of harassment have the option of contacting an EEO counselor within 45 days of the harassing incident. The names and telephone numbers of EEO counselors for your area are posted in each Fiscal Service facility.
- B. Harassment complaints filed with EEO counselors will be processed in accordance with Fiscal Service discrimination complaint procedures.
- C. Aggrieved parties may contact the bureau head and/or the Office of the Inspector General (IG) regarding sexual harassment allegations.
- D. Aggrieved parties may call the Discriminatory Harassment Hotline number, (304) 480-6527, or the Resolution Program Manager, (304) 480-6838, at any time to report an incident of sexual harassment and need not identify themselves. However, the formal EEO complaint process, should it be pursued, does not allow an aggrieved individual to remain anonymous.
- E. If the matter is not resolved via traditional counseling within 30 days, and the counseling period has not been voluntarily extended, the counselor will inform the aggrieved individual of his/her right to file a formal complaint.
- F. A formal complaint must be filed with the appropriate contact within 15 days of receipt of written notice of the right to file a formal complaint. The EEO counselor will provide the



aggrieved individual with the filing address.

- G. Once a formal complaint has been filed and accepted, a trained investigator will conduct an investigation into the complaint.
- H. Managers and supervisors will ensure that employees, contractors and vendors are free from restraint, interference, coercion, or reprisal in making a harassment complaint or appeal, in serving as a representative of a complainant or appellant, in appearing as a witness, or in seeking information in accordance with this policy. During any stage of the complaint process, aggrieved parties have the right to be accompanied, represented, and advised by a representative of their choice, unless a conflict of interest exists. Employees or contractors will also be granted a reasonable amount of official time to present their complaint.

### **Sanctions**

- A. Managers and supervisors will promptly and aggressively seek to stop any inappropriate behavior of a harassing nature that is brought to their attention.
- B. Departmental policy is that harassing behavior will not be tolerated. Fiscal Service will take swift and effective disciplinary action in cases where harassment has been committed.
- C. Corrective action will depend on the particular circumstances of each case. Corrective actions may include counseling (verbal or written), warnings, reprimands, suspension, transfer to a different post of duty, or termination.

<b>ALLEGATION OF HARASSMENT IN THE BUREAU OF THE FISCAL SERVICE WORKPLACE</b> <i>Form must be completed by an EEO Representative or Management Official</i>		
<b>Complete and return form within 24 hours of meeting with the aggrieved individual.</b>		
Management Official/EEOD Contacts Name:	Date:	Time:
Name of Aggrieved Individual:		
Date of Alleged Harassment:	Time:	
Place where alleged harassment occurred:		
Explanation of Allegations:		
Witness (es):		
<b>Aggrieved Individual:</b>  By signing this Form, I attest that the information I have provided is true and correct to the best of my current knowledge. Also, if I desire to pursue an individual complaint through the EEO process, I must contact an EEO Counselor within 45 calendar days of the alleged incident.		
<div style="border: 1px solid black; width: 100%; height: 20px; margin-bottom: 5px;"></div> <div style="display: flex; justify-content: space-between;"> <span>Signature</span> <span>Date</span> </div>		
Management Official's/EEOD Contact's Signature:		Date:
Telephone Number:		
Date of Referral to EEOD, WRB, or Security Branch:		