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ADS Chapter 114

Anti-Harassment Program

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 ADS Chapter 114 – Anti-Harassment Program
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ADS Chapter 114 – Anti-Harassment Program

114.1 OVERVIEW

Effective Date: 09/24/2021

This chapter provides the authority, responsibilities, and procedures that the U.S. Agency for International Development (USAID), Office of Civil Rights (OCR) uses to address allegations of harassment in the workplace. For this chapter, the term “harassment” refers to harassment that is equal employment opportunity (EEO)-related unless otherwise stated.

Note: The process for reporting a claim of harassment as described in this directive is not the same as filing an EEO complaint, pursuant to [ADS Chapter 110, Equal Employment Opportunity](#), and pursuing forms of compensation granted through discrimination complaints. Each process has different requirements and timeframes and may provide alternative methods of resolution.

The Equal Employment Opportunity Commission (EEOC) identifies six essential elements necessary to create and maintain the minimum requirements for a model EEO program, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 and the Americans with Disabilities Act Amendments Act of 2008 (Pub. L. 110-325).

In FY 2003, the EEOC issued EEO Management Directive (MD) 715, which established that model EEO programs must issue policies and procedures for addressing all forms of harassment and that agencies must create a work environment that is free from sexual and non-sexual harassment.

Harassment is a form of inappropriate workplace conduct based on a person’s protected class, i.e., race, color, age, religion, national origin, sex (including pregnancy, gender identity, sexual orientation, and transgender status), physical or mental disability, genetic information, marital status, veteran status, status as a parent, political affiliation, or reprisal that undermines good order and discipline. USAID’s policy is to take appropriate action as timely as possible to prevent, address, and eliminate harassing behavior that tends to limit or harm an individual’s terms, conditions, and/or privileges of employment or has the effect of unreasonably interfering with an individual’s work performance and/or creating an intimidating, hostile, or offensive work environment that is severe or pervasive.

USAID is committed to creating and maintaining a work environment where all individuals are treated with respect and dignity and enjoy equal employment opportunities free from any form of misconduct as defined by Federal law and Agency policy. The work environment must be one of mutual trust and respect, absent of intimidation and harassment. USAID is required to provide a safe and secure work environment free from fear of reprisal.

114.2 PRIMARY RESPONSIBILITIES

Effective Date: 09/24/2021

a. The USAID Administrator:

- 1) Exercises statutory responsibility for the development, maintenance, and implementation of the USAID Anti-Harassment Program as required by laws, rules, and regulations;
- 2) Designates the Director of the Office of Civil Rights (D/OCR) to carry out the functions of this directive in all USAID organizational units and locations;
- 3) Ensures that adequate resources are provided to create and maintain the requirements of a model EEO Program, which includes an Agency Anti-Harassment Program; and
- 4) Supports the development of anti-harassment policies, practices, and procedures that foster a harassment-free workplace where all individuals are treated with respect and dignity.

b. The Director of the Office of Civil Rights (D/OCR):

- 1) Serves as the USAID EEO Director;
- 2) Implements, administers, and monitors anti-harassment laws, regulations, directives, Executive Orders, programs, policies, practices, and procedures applicable to the Agency, its staff, and applicants for employment;
- 3) Oversees the implementation of the Agency Anti-Harassment Program in a manner consistent with USAID policies and procedures, and all applicable Federal laws, regulations, and guidelines; and
- 4) Ensures there is no conflict of interest between the Agency Anti-Harassment Program and the Agency EEO Complaints Program.

c. The Chief of the Complaints and Resolution Team (in OCR) assists the D/OCR in all tasks listed above, as delegated. The Chief is responsible for the Agency's Anti-Harassment Program in accordance with [EEOC Management Directive 715](#), relevant USAID policies, and other related laws, rules, policies, and directives. The Chief designates the Agency's Anti-Harassment Program Manager and ensures staff have the knowledge, skills, and abilities to perform the duties and responsibilities of the Agency Anti-Harassment Program.

d. The Anti-Harassment Program Manager leads a team of Anti-Harassment Program Specialists who are responsible for:

- 1) Processing (from inquiry to determination) complaints of harassment that have an EEO basis involving USAID staff acting in an official status and/or where their conduct has a connection to their employment; or where the Aggrieved was subjected to the alleged harassment while in an official status;
- 2) Providing training to managers, supervisors, and other responsible management officials (e.g., Administrative Officer, Executive Officer) in collaboration with GC/EA regarding preventing and addressing harassment;
- 3) Providing training and information on the Agency's Anti-Harassment Program to the USAID workforce;
- 4) Providing findings from inquiries into allegations of harassment to the Office of Human Capital and Talent Management, Office of Employee and Labor Relations (HCTM/ELR), the Office of the General Counsel, Ethics and Administration Division (GC/EA), the cognizant Contracting Officer (if the case involves a contractor), and relevant management officials, for any appropriate corrective or disciplinary action, and
- 5) Maintaining, collecting, monitoring, analyzing, and reporting on Anti-Harassment Program data for the Agency.

e. The Office of Human Capital and Talent Management, Office of Employee and Labor Relations (HCTM/ELR):

- 1) Processes (from inquiry to determination) allegations of misconduct involving USAID U.S. Direct-Hires where their conduct has a connection to their employment;
- 2) Makes recommendations in coordination with GC/EA to management officials regarding possible interim measures for U.S. Direct-Hires alleging misconduct;
- 3) Makes recommendations in coordination with GC/EA regarding solutions, corrective actions, and/or discipline to management officials to address misconduct;
- 4) Assists managers, supervisors, and Contracting Officers with processing any disciplinary action the supervisor or CO implements to address findings; and
- 5) Manages intake of misconduct through [USAID's Misconduct Reporting Portal](#), including directing allegations to the responsible entities (e.g., OCR, the Office of Security (SEC), Office of the Inspector General (OIG), Resident Legal Officer); tracking report status and inquiry completion, in addition to analyzing and reporting on Misconduct Reporting Portal data, in close coordination with other responsible entities; and overseeing records management responsibilities for the portal.

f. Executive Officers (EXOs) in their role of human capital management at USAID Missions and Offices abroad, facilitate procedures for preventing and addressing harassment, in coordination with the appropriate subject matter experts (HCTM, Resident Legal Officers, GC/EA).

g. The Resident Legal Officer (RLO):

- 1) Works with the Anti-Harassment Program Manager, GC/EA and the EXO to process harassment allegations at Missions, which may require an inquiry, supplemental inquiry, and/or the determination of interim measures;
- 2) Advises Mission management officials in helping prevent and address any potential harassment throughout the Anti-Harassment Program process;
- 3) Advises Mission management officials of their responsibilities during the Anti-Harassment Program process, including to respond timely; and
- 4) Provides findings from inquiries to relevant management officials for action, as appropriate.

h. The Office of the General Counsel, Ethics and Administration Division (GC/EA):

- 1) Advises Agency RLOs, supervisors, OCR, HCTM and management officials throughout the Anti-Harassment Program process;
- 2) Reviews, as requested, relevant Anti-Harassment documents and policies for legal sufficiency; and
- 3) Makes recommendations in coordination with HCTM/ELR regarding solutions, corrective actions and/or discipline to management officials to address findings of harassment or other misconduct regarding all hiring types on which HCTM/ELR advises. For other hiring contracting mechanisms (e.g., USPSCs, CCNPSCs and TCNPSCs), GC/EA makes recommendations regarding solutions, corrective actions and/or discipline to the relevant management officials and Contracting Officers.

i. Contracting Officers (COs), including warranted EXOs, upon receipt of a substantiated report of harassment takes appropriate contract administrative action in accordance with the terms and conditions of the contract, in those cases involving contractors (including Personal Services Contractors (PSCs)). COs will notify HCTM/ELR about any contract administrative action taken in relation to a report to ensure that the Misconduct Reporting Portal is updated. The term "CO" in this chapter includes all individuals who are warranted or otherwise delegated authority to award U.S. Government contracts.

j. The **Office of Inspector General (OIG)** is statutorily authorized to conduct independent and objective audits and investigations of USAID and report its findings to USAID, Congress, and the public; assess and monitor foreign aid and development activities; and, where appropriate, recommend actions for improving agency programs and operations and safeguarding taxpayer funds. In cases where allegations of harassment intersect with issues of fraud, waste, and abuse or criminal acts, reported allegations may be referred to the OIG for review. OIG considers all available criminal, civil, and administrative enforcement remedies, as appropriate. The OIG processes all allegations of harassment, whether EEO-based or not, when the alleged harasser is a member of the OIG workforce, regardless of hiring mechanism.

k. Managers, Supervisors, and other Management Officials:

- 1) Model professional behavior that fosters and promotes a work environment free from harassment;
- 2) Take steps to ensure that the USAID work environment is free from harassing conduct;
- 3) Ensure that their subordinates are informed about the USAID Anti-Harassment Policy, and the subordinates' responsibilities to create, foster, and maintain a work environment that is free from harassment;
- 4) Act promptly and effectively to stop potential harassment in coordination with the appropriate advisory entity (e.g., HCTM/ELR and/or GC);
- 5) Respond timely and with reasonable care to allegations of harassment, including reporting immediately, but no later than one business day, to OCR any EEO-based allegations of harassment that they observe, learn about, are informed of, or reasonably suspect;
- 6) Take or facilitate (in the case of foreign service employees) prompt and appropriate corrective, remedial, or disciplinary action in coordination with the appropriate advisory entity (e.g., HCTM/ELR and/or the Office of the General Counsel) to address findings of harassment and/or misconduct;
- 7) Monitor the work environment following a report of harassment to take reasonable measures to prevent incidents of retaliation against individuals who have reported harassment or participated in an inquiry into allegations of harassment;
- 8) Keep information about and related to allegations of harassment and obtained during inquiries into alleged harassment confidential, disclosing information only to those with an official need to know; and

9) Take required anti-harassment training annually.

I. **USAID Staff** cooperate fully in any inquiry alleging harassment (Federal employees do not have a right to refuse to participate in an inquiry); where involved as witnesses in an inquiry, keep information about and related to allegations of harassment confidential, disclosing information only to those with an official need to know; and take required anti-harassment training and know what harassment is, their rights and responsibilities regarding harassment, and how and/or where to report allegations of harassment.

114.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

Effective Date: 09/24/2021

USAID does not tolerate harassment in the workplace by anyone, including the Agency's senior leaders, managers, supervisors, staff, contractors, applicants for employment, or visitors. USAID takes steps to prevent harassment by addressing inappropriate conduct before it rises to the level of violating Agency policy or any applicable Federal laws, statutes, or regulations. This policy explains USAID's expectations regarding harassing conduct in the workplace.

114.3.1 Harassing Conduct

Effective Date: 09/24/2021

For the purposes of this policy, harassment is defined as:

- a. Any unwelcome verbal, non-verbal, or physical conduct based on an individual's EEO protected categories, such as race, color, national origin, sex (including pregnancy, gender identity, sexual orientation, or transgender status), age (40 or older), religion, genetic information (including family medical history), physical or mental disability, or retaliation for engaging in EEO activity that is severe or pervasive and has the purpose or effect of unreasonably interfering with a staff's work performance, or creating an intimidating, hostile, or offensive work environment; and/or
- b. Conduct based on any of the above-referenced protected categories, even if the conduct has not risen to the level of illegality.

114.3.1.1 Actions That Qualify as Harassment

Effective Date: 11/09/2022

- a. Unwelcome verbal, non-verbal, or physical conduct based on a protected category may constitute harassment when:
 - It is severe or pervasive enough that it substantially interferes with an individual's work performance;

- It creates a work environment that is intimidating, hostile, or offensive to a reasonable person who is exposed to the same or similar circumstances;
 - Where sexual harassment is concerned, submission to, or rejection of, such conduct is the basis for an employment decision; or
 - It otherwise adversely affects an individual's employment opportunities.
- b. Harassing verbal conduct based on a protected category may include (if it meets the factors listed in **114.1**), but is not limited to:
- Slurs, epithets, or name calling;
 - Telling offensive jokes or stories;
 - Derogatory remarks, such as racial or sexual innuendos;
 - Mimicking an individual's manner of speech or movement;
 - Turning work discussions to sexual or derogatory topics;
 - Repeatedly asking a person out who is not interested;
 - Spreading rumors;
 - Incessant teasing;
 - Expressing or insinuating threats; and/or
 - Repeatedly and intentionally misgendering someone or intentionally or disclosing someone's sexual orientation where it is reasonable to believe that person may not want their sexual orientation disclosed..
- c. Harassing non-verbal conduct based on a protected category may include (if it meets the factors listed in **114.3.1**), but is not limited to:
- Leering/staring;
 - Looking a person up and down ("elevator eyes");
 - Standing/sitting closer to a person than appropriate or necessary;
 - Displaying inappropriate/offensive material;

- Sending inappropriate photos, emails, text messages, instant messages, or other chats, or posting on social media (including outside of work hours); or
 - Making gestures with hands and/or body movements, such as facial expressions (winking, throwing kisses, eye-rolling, or licking lips).
- d. Harassing physical conduct based on a protected category may include (if it meets the factors listed in **114.3.1**), but is not limited to:
- Unwanted, deliberate touching (massaging, rubbing, brushing against, etc.), whether of a person's clothing, hair, or body;
 - Malicious or insulting gestures/sounds; or
 - Blocking a person's path or movements.

114.3.2 Reporting Harassing Conduct

Effective Date: 09/24/2021

Agency management officials, which include supervisors and other management officials (*i.e.*, Administrative Officers, Executive Officers, and RLOs/attorneys in GC), who observe, are informed of, or reasonably suspect incidents of possible harassment based on a protected category must report the allegations to OCR within one business day of having knowledge of the information. This is true even when the staff allegedly subjected to harassment does not request action against the alleged harasser, requests that it not be reported, and even when the alleged misconduct does not rise to the level of illegal harassment.

Staff who believe they have been subjected to harassment are strongly encouraged to report it. The Agency cannot address or stop harassing conduct unless and until the matter is reported.

In general, an individual who is being or has been subjected to harassment is encouraged to inform the person(s) responsible for the conduct that it is unwelcome and offensive, and request that it cease. The individual also has multiple avenues to report the harassing conduct:

- a. Their immediate supervisor;
- b. The supervisor of the person who they allege engaged in the conduct;
- c. Any supervisor or other management official (*i.e.*, Administrative Officers, USAID Attorneys, Executive Officers);
- d. An Equal Employment Opportunity Counselor;

- e. An Anti-Harassment Program staff member in OCR;
- f. OCR's Anti-Harassment Program via the **OCRharassment@usaid.gov** mailbox;
- g. The USAID Office of the Inspector General Hotline (for staff of OIG);
- h. The **Misconduct Reporting Portal** is available on LaunchPad (<https://launchpad.usaid.gov>), located under the "Quick Links" menu on the left-hand side of the screen. The Portal offers three options for reporting: 1) Standard; 2) Confidential; and 3) Anonymous. Under standard reporting, the individual gives the Agency permission to use their name and information as needed to resolve the situation. Under confidential reporting, the individual gives the Agency permission only to provide their name and information to investigative bodies as needed to resolve the situation. Under anonymous reporting, the Agency does not have access to an individual's name, and it may substantially compromise the ability of the Agency to thoroughly review or take action to resolve the allegation; and/or
- i. The USAID Desk at (202) 712-1234. and select Human Resource Support from the options menu.

For OCR to take immediate and appropriate action, all available avenues must promptly notify OCR of the allegations via email at **OCRharassment@usaid.gov**.

Any staff who observes or otherwise learns of harassment that appears directed against other individuals is encouraged to report the alleged harassment to any of the individuals listed above. This is particularly important if the subject of the alleged harassment appears hesitant to come forward. Everyone's commitment to creating and maintaining a culture of dignity and respect is the best way to create a harassment-free workplace environment and culture.

OCR will initiate an impartial and thorough inquiry of all reported allegations of harassment, including retaliatory harassment, as necessary. OCR will maintain all information confidential to the greatest extent possible to carry out the purpose and intent of this ADS Chapter.

Staff who report allegations of harassment are protected from retaliation for reporting those allegations to the Agency regardless of where or to whom they make the report.

Note: Reports of harassment processed by the Agency's Anti-Harassment Program and pursuant to this ADS Chapter are not part of, and do not serve as a substitute, or otherwise satisfy the separate EEO complaint process, or any other process granted to staff by other laws, regulations, and/or policies. The purpose of the Anti-Harassment Program is to enable the Agency to prevent harassing conduct before it becomes severe or pervasive by taking immediate and appropriate corrective action to eliminate the harassing conduct regardless of whether the conduct violated the law.

114.3.3 Processing Harassment Allegations

Effective Date: 09/24/2021

When an allegation of harassment is reported to OCR, the Anti-Harassment Program staff will take appropriate action to conduct an inquiry into the allegation, as necessary, and refer the findings of the inquiry to agency officials to take the appropriate actions. HCTM/ELR will perform inquiries into allegations of harassment against U.S. Direct Hires that do not have an EEO basis, as necessary.

The Anti-Harassment Program staff will acknowledge reports of alleged harassment as soon as possible after receipt, generally no later than two business days. The Anti-Harassment Program staff will thoroughly review the intake report and documentation to determine the appropriate office to address the alleged harassment.

Occurrence	Office Responsible for Processing
Anyone in the USAID workforce that alleges harassment that has an EEO basis.	OCR
U.S. Direct-Hires that allege harassment that does not have an EEO basis.	HCTM/ELR

114.3.3.1 Notifying Appropriate Officials

Effective Date: 09/24/2021

Supervisors and other management officials have special reporting requirements for tracking and accountability purposes. Supervisors and management officials who observe, are informed of, or reasonably suspect incidents of alleged harassment must report such incidents within one business day of having knowledge of the information according to section **114.3.3.2**. OCR’s Anti-Harassment Program staff will notify the chain of command of the alleged harasser and other agency officials who may have a need to know (*i.e.*, to support interim measures).

114.3.3.2 Intake

Effective Date: 09/24/2021

Agency Anti-Harassment Program staff will typically document basic information regarding allegations of harassment as soon as possible after receipt of the allegations. This basic information includes:

- a. Information about involved individuals, including the individual alleged to be harassed, the alleged harasser, and witnesses or others with knowledge of the incident(s): 1) full name, 2) contact information, 3) position title, 4) hiring mechanism, and 5) office/work location;

- b. Description of the alleged harassment, including the date(s) the alleged harassment occurred and whether the alleged harassment is alleged to be based on a protected EEO category (race, color, national origin, sex (including pregnancy, gender identity, sexual orientation, or transgender status), age (40 or older), religion, genetic information (including family medical history), physical or mental disability, or retaliation);
- c. Whether the supervisor and/or other management official took any steps in response to the alleged harassment; and
- d. Any other useful, preliminary information.

114.3.3.3 Notice of Rights and Responsibilities

Effective Date: 09/24/2021

During the intake process, the Agency Anti-Harassment Program staff will inform the aggrieved of the following:

- The Anti-Harassment program procedural steps;
- That an inquiry of the alleged conduct will be as timely as possible and will depend on the circumstances of the case, such as its complexity; and
- That the alleged misconduct and all related information will be maintained on a confidential basis to the extent practicable, and that pertinent information will be provided to relevant offices and people as necessary to conduct a thorough and fair inquiry and resolution, and as required by law.

Agency Anti-Harassment Program staff will advise the aggrieved of their rights, as applicable, to access avenues of redress and how to access them, including:

- Their right to file a complaint with OCR under the EEO process, which includes informing the aggrieved of the related deadlines for the EEO complaint process, if their allegations have an EEO basis;
- Their right to file a grievance under the American Federation of Government staff's Collective Bargaining Agreement and the American Foreign Service Association's Framework Agreement, if applicable; and
- Their right to go to the U.S. Office of Special Counsel if the conduct is alleged to be based on marital status, political affiliation, or whistleblower retaliation.

Agency Anti-Harassment Program staff will ensure that all individuals who are involved in the procedures under this directive, including the aggrieved, the alleged harasser, individuals who participate in any inquiry of the alleged harassment, and relevant supervisors and other management officials, are informed about the prohibition against retaliation.

114.3.3.4 Interim Measures

Effective Date: 09/24/2021

Agency Anti-Harassment staff will thoroughly review all reports of harassment and will pay particular attention to the specific allegations, noting the alleged harasser and their position within the Agency. Anti-Harassment Program staff will consult with HCTM/ELR and GC, as necessary, to determine whether the severity and/or the specific circumstances of the allegations may promote the use of interim measures or an expedited resolution to ensure the safety of the aggrieved and/or others.

HCTM/ELR and/or GC must provide guidance to supervisors or other responsible management officials as needed regarding the allegations, including implementation of any interim measures to address the reported situation, where appropriate. Supervisors, if they receive such guidance from HCTM/ELR and/or GC, must take effective measures to prevent no further apparent or alleged harassment takes place pending completion of an administrative inquiry.

Interim measures are temporary risk mitigation actions intended to prevent further alleged harassment and/or harm from continuing or escalating during an inquiry. Interim measures are not disciplinary actions. Supervisors or other responsible officials must determine, with the appropriate consultation, whether interim measures are necessary in each situation. HCTM/ELR and GC are available to provide guidance on the implementation of such measures and handling the alleged misconduct based on the specifics of the situation and the individual's hiring type. In many instances, interim measures are not necessary, and whether these measures are necessary in any instance is fact specific.

Interim measures may include a variety of actions, such as:

- A physical separation of the alleged harasser from the aggrieved individual's workspace;
- A telework schedule for the alleged harasser;
- A directive to the alleged harasser to limit communications with the aggrieved to business needs, to copy the supervisor on all communications with the aggrieved, or to refrain altogether from communicating with the aggrieved;
- A temporary duty assignment (TDY) elsewhere for the alleged harasser, if a direct-hire employee; or
- A memorandum to the alleged harasser notifying them that allegations have been raised and that any such behavior should stop immediately (*i.e.*, "cease and desist" notice).

In determining the need for interim measures, particular consideration should be given to any disparate power dynamics between the aggrieved and the alleged harasser. This may include power dynamics between supervisors and supervisees or dynamics between U.S. staff and local staff at post. At post, where appropriate, the Mission Director, in consultation with other entities (e.g., RLO, EXO, HCTM/ELR, GC/EA), may consider whether the alleged harasser's credibility as a USAID representative in the host country has been compromised enough to warrant involuntary curtailment, as appropriate. Should there be plausible evidence that the alleged harasser is engaging in retaliation, curtailment may also be appropriate. The Agency may notify the aggrieved of implemented interim measures, as appropriate. In addition, the Agency will generally not impose an action on the aggrieved (e.g., moving the aggrieved individual's office, requiring the aggrieved to telework) as an interim measure without the aggrieved individual's request or cooperation.

114.3.4 Conducting the Inquiry

Effective Date: 09/24/2021

The purpose of an inquiry is to obtain information from the aggrieved, witnesses, the alleged harasser, and any other relevant individuals, to determine whether and to what degree harassment occurred. The Anti-Harassment Program staff will collect relevant documentary and photographic evidence, or other physical evidence.

Inquiries may take a variety of forms, but generally they involve collecting statements from individuals and reviewing documentation. At the conclusion of the inquiry, the Anti-Harassment Program staff will conduct an objective analysis based on the information gathered.

When conducting the inquiry, the Anti-Harassment Program staff must gather sufficient information and evidence needed to determine:

- a. Whether harassing conduct occurred, and, if it occurred, the degree to which it occurred.
- b. What action should be taken to stop and prevent further harassing conduct from occurring.
- c. What, if any, corrective or disciplinary action should be taken to address any substantiated harassing conduct.

114.3.4.1 Standard and Scope of Inquiries

Effective Date: 09/24/2021

The Anti-Harassment Program staff will conduct thorough and impartial inquiries. A report of alleged harassment must not be presumed true and an alleged harasser must not be presumed to have engaged in misconduct unless and until a complete inquiry determines that harassment, regardless of degree, occurred.

Anti-Harassment Program staff will, on a case-by-case- basis, determine the scope of the inquiry and who will conduct the inquiry.

The inquiry official will explain to the aggrieved and alleged harasser what will happen throughout the course of the inquiry, including an assurance that the inquiry will be as timely as possible, taking into account the complexity of the case. The inquiry official will also notify the aggrieved and alleged harasser that the report of inquiry, as well as all related information, will be maintained on a confidential basis and that only those with a need to know will have access to it.

114.3.4.2 Cooperation and Confidentiality

Effective Date: 09/24/2021

All parties – the aggrieved, alleged harasser, and identified witnesses – are required to cooperate with an inquiry so that it can be conducted in a thorough manner.

USAID will keep reports and inquiries into allegations of harassment confidential to the greatest extent possible, as consistent with the law and a thorough and fair process. This means that only individuals who need to know about alleged harassment will be informed. For example, conducting a thorough and fair inquiry will require that the person conducting the inquiry talk with the alleged harasser. Further, the person conducting the inquiry may need to talk with the direct supervisor of the alleged harasser and the aggrieved, as well as other witnesses necessary for the inquiry.

Anti-Harassment Program staff will provide information regarding the outcome of an inquiry only to those management officials with a need-to-know such information.

114.3.4.3 Credibility Determinations

Effective Date: 09/24/2021

If there are conflicting versions of relevant events, the person conducting the inquiry must weigh each party's credibility. Credibility assessments can be critical in determining whether the alleged harassing conduct occurred. Factors that are considered may include:

- a. Inherent plausibility: Is the testimony believable on its face? Does it make sense?
- b. Motive to falsify: Did the person have a reason to lie?
- c. Corroboration: Is there witness testimony (e.g., testimony by eye-witnesses, people who saw the aggrieved or alleged harasser soon after the alleged incidents, or people who discussed the incidents with either person around the time that they occurred) or physical evidence (such as written documentation) to support either party's testimony?

- d. Past record: Did the alleged harasser have a history of similar behavior in the past?

A lack of an eyewitness to alleged harassment does not necessarily diminish the aggrieved individual’s credibility since harassment often occurs behind closed doors. The fact that an alleged harasser may have engaged in similar behavior in the past does not necessarily mean that they did so in this instance.

114.3.4.4 Closeout Memorandum

Effective Date: 09/24/2021

Once all evidence has been collected and interviews are finalized, the Anti-Harassment Program will generate an administrative inquiry report (a “Closeout Memorandum”) with findings as to whether harassment occurred and to what degree.

- a. The Anti-Harassment Program staff will prepare a Closeout Memorandum for the record that includes:
 - 1) Findings: A summary of what is believed to have happened or occurred based on the statements and evidence collected.
 - 2) Determination: A summary about whether the alleged harasser did or did not subject the aggrieved to harassment, the degree to which any harassment occurred, and whether it violated Agency policy.
 - 3) Where there is an anticipated finding of harassment, OCR will notify GC/EA in advance to discuss the analysis of the findings and finalize the Closeout Memorandum. The GC attorney reviewing the findings will act in an advisory role and may not serve as an Agency representative in any EEO complaint filed by the same aggrieved or alleged harasser to avoid any perceived conflict of interest.
- b. OCR must sign the Closeout Memorandum and notify the aggrieved about the outcome. OCR will also inform the aggrieved’s supervisor and the alleged harasser’s supervisor, as appropriate.

Note: As a neutral office, OCR does not have jurisdiction or authority to impose disciplinary and/or corrective actions on individuals who violate or fail to comply with this policy (with the exception of staff within OCR). OCR will refer findings, including potential misconduct to the responsible office (e.g., supervisor of the alleged harasser, ELR, RLO) for further action, as deemed necessary.

Alleged Harasser	Recipient of Report
Civil Service staff (including detailees)	<ul style="list-style-type: none"> ● Supervisor of the alleged harasser ● HCTM/ELR

Alleged Harasser	Recipient of Report
	<ul style="list-style-type: none"> ● GC/EA
Foreign Service staff, including Foreign Service Limited	<ul style="list-style-type: none"> ● Supervisor of the alleged harasser ● HCTM/ELR ● Director, HCTM/Foreign Service Center ● GC/EA
PASA Staff	<ul style="list-style-type: none"> ● Participating Agency, consistent with Federal laws, regulation and guidance and Agency policy on privacy ● GC/EA, GC/A&A ● Agency signatory to the Agreement (or successor)
Foreign Service National Direct Hire Staff (see ADS 495)	<ul style="list-style-type: none"> ● Supervisor of the alleged harasser ● RLO ● EXO
PSCs at Missions (i.e., US, CCN, and TCN PSCs)	<ul style="list-style-type: none"> ● Supervisor of the alleged harasser ● RLO ● Cognizant CO (including CO warranted EXO)
USPSCs in Washington	<ul style="list-style-type: none"> ● Supervisor of the alleged harasser ● Cognizant CO ● GC
Contractor Employee (ISC)	<ul style="list-style-type: none"> ● Subject to information disclosure policies and the terms and conditions of the contract, USAID will provide the results of any inquiry to the Contractor for action. It is the Contractor's responsibility to ensure its policies are followed and any disciplinary actions are taken consistent with those policies. USAID cannot take direct disciplinary action against a contractor's employees but can consider this information and the response in management of and any impact on the Contractor's overall performance. For ISCs with performance overseas see also contract clause 752.7013 Contractor-mission relationships ● Cognizant CO
Student Volunteer Intern (Washington)	<ul style="list-style-type: none"> ● Supervisor of the alleged harasser ● GC/EA
Student Volunteer	<ul style="list-style-type: none"> ● Supervisor of the alleged harasser

Alleged Harasser	Recipient of Report
Intern (Overseas)	<ul style="list-style-type: none"> ● RLO ● EXO

114.3.4.5 Timeframes

Effective Date: 09/24/2021

Promptness is an important aspect of addressing harassment, as when addressing any allegation of misconduct. OCR's Anti-Harassment Program will adhere to the following timeframes when it receives a report of alleged harassment:

- a. Acknowledge the report as soon as possible, generally within two business days after receipt of allegations;
- b. Where the allegations regards harassment without an EEO basis, refer the allegation to HCTM/ELR;
- c. Where the allegation regards harassment with an EEO basis, begin the inquiry as soon as possible, generally within 10 calendar days after receipt of allegations;
- d. Propose interim measures in the meantime, if appropriate;
- e. Complete an inquiry as quickly as possible, generally within 30-40 calendar days after receipt of allegations, unless there are extenuating circumstances. If this timeline cannot be met, OCR's Anti-Harassment Program will typically provide an update(s) to the aggrieved including a general explanation for any delays.
- f. Complete the Closeout Memorandum within a reasonable amount of time after the administrative inquiry is completed (where subpart (e) above does not apply).

114.3.5 Retaliation

Effective Date: 09/24/2021

Retaliatory action against anyone for raising an allegation of harassment or filing a complaint of harassment; helping another staff make an allegation or file a complaint; participating in an inquiry into alleged or potential harassment; or opposing harassment, is strictly prohibited by [USAID's Standards of Conduct](#) and the [Agency's Equal Employment Opportunity Policy Statement](#). The Agency assures staff that they will be protected against retaliation. Any staff found to have engaged in retaliation will be subject to appropriate administrative action. Management will be held accountable for taking reasonable measures to prevent and promptly stop any retaliatory conduct.

114.3.6 Training

Effective Date: 09/24/2021

USAID's responsibility to exercise reasonable care to prevent and correct harassment is not limited to implementing an Agency anti-harassment policy and complaint procedure. USAID must ensure that its supervisors and managers understand their responsibilities under the Agency's anti-harassment policy and complaint procedure.

All managers and supervisors are required to take the anti-harassment training annually through USAID's Learning Management System (LMS). This training identifies the types of conduct that violate the Agency's policy; makes clear the seriousness of the policy; outlines the responsibilities of supervisors and managers when they learn of alleged harassment; and emphasizes the prohibition against retaliation.

OCR will review the training on an annual basis, make updates as necessary, and remind all supervisors and other management officials of their responsibility and requirement to complete the training.

114.3.7 Record Keeping of Harassment Allegations

Effective Date: 09/24/2021

Agency Anti-Harassment Program staff must ensure the maintenance and tracking of information pertaining to allegations of harassment. Tracking data about allegations of harassment is necessary for record-keeping purposes (see [ADS 502](#) for guidance on records-keeping requirements including disposition schedules).

114.3.8 Accountability

Effective Date: 09/24/2021

USAID workforce including staff, managers, and supervisors, and those individuals working on behalf of or for the Agency are held accountable for complying with this Anti-Harassment policy and for fostering a respectful, safe, healthy, and inclusive work environment in the workplace. As it does with all misconduct, when appropriate, USAID will consider findings of harassment when making decisions regarding performance, hiring, awards, public recognition, promotions, and other personnel and procurement actions (e.g., procuring services).

Accountability is measured by the actions taken against those individuals who violate or fail to comply with this policy. The ultimate accountability for these types of actions fall on the responsible offices (recipient of report).

114.3.8.1 Performance Management

Effective Date: 09/24/2021

USAID's performance management system must help to foster a workplace free of harassment. The performance management standards for all Foreign Service, including Senior Foreign Service, and all Civil Service employees, including General Schedule, Senior Executive Service, Senior Level, Scientific and Professional, Presidential Appointees, and Administratively Determined employees, should identify elements that

pertain to maintaining such a workplace. Supervisors and staff must consider these elements when developing new performance plans and when evaluating Direct-Hire employees.

114.3.8.2 Vetting Prior to Personnel Actions

Effective Date: 09/24/2021

Agency management will ensure appropriate vetting for harassment when considering Direct-Hire employees for awards and long-term training, promotions, bonuses, Senior Leadership Group (SLG) assignments, and tenure.

114.4 MANDATORY REFERENCES

114.4.1 External Mandatory References

Effective Date: 09/24/2021

- a. [3 FAM 1525](#)
- b. [3 FAM 1526](#)
- c. [3 FAM 1527](#)
- d. [5 CFR 339.101-104](#)
- e. [29 CFR 1608, Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964, as amended](#)
- f. [29 CFR 1614, Federal Sector Equal Employment Opportunity](#)
- g. [Civil Rights Act of 1964, Title VII \(P.L. 88-352\)](#)
- h. [Civil Rights Act of 1991](#)
- i. [EEOC Management Directive 110](#)
- j. [EEOC Management Directive 715 \(2003\)](#)
- k. [EEOC Model EEO Programs Must Have an Effective Anti-Harassment Program \(2005\)](#)
- l. [EEOC Policy Guidance on Current Issues of Sexual Harassment \(1990\)](#)
- m. [Equal Employment Opportunity Commission \(EEOC\) Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors \(1999\)](#)
- n. [Equal Pay Act of 1963](#)

- o. [Executive Order 11478, Equal Employment Opportunity in the Federal Government](#)
- p. [Executive Order 13087, Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government](#)
- q. [Executive Order 13152, Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government](#)
- r. [Federal Acquisition Regulation \(FAR\)](#)
- s. [Genetic Information Nondiscrimination Act of 2008](#)
- t. [Notification and Federal Employee Antidiscrimination Retaliation Act of 2002](#)
- u. [The Age Discrimination in Employment Act of 1967 \(ADEA\) \(P.L. 90-202\)](#)
- v. [The Rehabilitation Act of 1973, Sections 501 and 505](#)

114.4.2 Internal Mandatory References

Effective Date: 09/24/2021

- a. [AAPSM Managers Toolkit](#)
- b. [ADS 110, Equal Employment Opportunity Program](#)
- c. [ADS 113, Preventing and Addressing Sexual Misconduct](#)
- d. [ADS 502, The USAID Records Management Program](#)
- e. [ADS 549, Telecommunications Management](#)
- f. [AIDAR](#)
- g. [USAID Employee Standards of Conduct](#)

114.5 ADDITIONAL HELP

Effective Date: 09/24/2021

There are no additional help documents for this chapter.

114.6 DEFINITIONS

Effective Date: 11/09/2022

See the [ADS Glossary](#) for all ADS terms and definitions.

Administrative Inquiry

Gathers facts and relevant evidence to provide the basis for management to determine what, if any, action to take. It is an inquiry that is not for the purpose of law enforcement or criminal prosecution but may lead to disciplinary action. An inquiry may be conducted for matters such as non-EEO harassment, EEO harassment, and other types of misconduct. Administrative inquiries are independent of the EEO complaint process. **(Chapter 114)**

Age

Refers to individuals who are at least 40 years old. **(Chapter [110](#), [114](#))**

Confidentiality

Assurance that information is held in confidence and protected from unauthorized disclosure. **(Chapter 114, [545](#))**

Cooperating Country National (CCN) Staff

An individual/staff who is a cooperating country citizen or a non-cooperating country citizen lawfully admitted for permanent residence in the cooperating country. For the purpose of this chapter, CCN staff are the same as FSN staff. Note FSN is the most widely used terminology to describe non-U.S. citizen staff. **(Chapter 114, [495](#))**

Detail

The temporary assignment or loan of a direct-hire staff to a different position within USAID, or an outside organization, for a specified period, with the expectation that the staff will return to the official position of record upon the expiration of the detail. **(Chapters 114, [418](#), [432](#), [434](#))**

Direct-Hire Employees

Direct-Hire employee refers only to U.S. citizens employed as Direct-Hire (general schedule Civil Service) and excepted service (non-career and Foreign service), expert, consultant or Advisory Committee Member serving without compensation working for USAID. This category, for the purposes of security clearances, also refers to temporary and intermittent employment (*i.e.*, interns-paid and unpaid) who are not hired under contract and “When Actually Employed” (WAE) staff. **(Chapters 114, , [566](#), [567](#))**

EEO Basis/Protected Categories or Classes

Based on an individual’s race, color, national origin, sex (including pregnancy, gender identity, sexual orientation, or transgender status), age (40 or older), religion, genetic information (including family medical history), physical or mental disability, or retaliation for engaging in EEO activity. **(Chapter 114)**

Foreign Service National Direct-Hire (FSNDH) Staff

A non-U.S. citizen staff hired by a USAID Mission abroad, whether full or part-time, intermittent or temporary, and inclusive of a Third Country National (TCN) who is paid

under the local compensation plan (LCP), and who was appointed under the authority of the Foreign Service Act of 1980 (the ACT). (**Chapter 114**)

Gender

A social construct that refers to relations between and among the sexes based on their relative roles. It encompasses the economic, political, and socio-cultural attributes, constraints, and opportunities associated with being male or female. As a social construct, gender varies across cultures, is dynamic, and is open to change over time. Because of the variation in gender across cultures and over time, gender roles should not be assumed but investigated. Note that gender is not interchangeable with women or sex. (Chapter 201) (**Chapter 114** and [201](#))

Gender Identity

A person's deeply held core sense of self in relation to gender (see **Gender**). Gender identity does not always correspond to biological sex. (**Chapter 114**)

Interim Measures

Temporary actions that a management official may take to ensure that alleged harassment does not continue while an administrative inquiry is pending. (**Chapter 114**)

Manager

Directs the work of an organization, is held accountable for the success of specific line or staff programs, monitors the progress of the organization towards goals and periodically makes adjustments. Management officials include Administrative Management Services Officers, Executive Officers, Attorneys in the Office of General Counsel (including RLOs) and supervisors (whether the individual supervises the parties involved). (**Chapter 114**, [413](#))

Misconduct

Misconduct that is broader than harassment because it does not require membership in a protected class or that the conduct be severe or pervasive. Inappropriate conduct includes any comments or conduct that disparages or demonstrates hostility or aversion towards any person that could reasonably be perceived as disruptive, disrespectful, offensive, or inappropriate in the work environment. Examples of conduct that is inappropriate includes, but is not limited to slurs, epithets, or insults; yelling or emotional outbursts, cursing, throwing objects, slamming doors; circulating or displaying written material or images which denigrates or is otherwise offensive in nature; physical intimidation or aggression; inappropriate gestures; threats made against others or threatening behavior; pranks or other conduct aimed at embarrassing another person; psychological bullying or intimidation; making statements that are false, malicious, disparaging, or derogatory with the intent to hurt another's reputation. (**Chapter 114**)

Misgender

To refer to an individual using a word, especially a pronoun or form of address, which does not correctly reflect their gender. (**Chapter 114**)

Responsible Office

An office with management authority to take any disciplinary or corrective action against a staff member in that office. **(Chapter 114)**

Sex

A biological construct that defines males and females according to physical characteristics and reproductive capabilities. For monitoring and reporting purposes, USAID disaggregates data by sex, not by gender. Gender and sex are not synonyms. **(Chapters 114, [200](#), [201](#))**

Sexual Orientation

An inherent or immutable enduring emotional, romantic or sexual attraction to other people. Sexual orientation is independent of gender and gender identity. **(Chapter 114)**

Third Country Nationals (TCNs)

A legal resident, but not a citizen, of the non-U.S. country in which the Sponsoring Unit is operating. **(Chapter 114)**

Unlawful Harassment

Unlawful harassment is any unwelcome verbal, non-verbal, or physical conduct based on an individual's race, color, national origin, sex (including pregnancy, gender identity, sexual orientation, or transgender status), age (40 or older), religion, genetic information (including family medical history), physical or mental disability, marital status, veteran status, status as a parent, political affiliation, or retaliation for engaging in EEO activity that is severe or pervasive and has the purpose or effect of unreasonably interfering with a staff's work performance and/or creating an intimidating, hostile, or offensive work environment. **(Chapter 114)**

USAID Staff

USAID staff, including General Schedule (GS), Foreign Service (FS), Senior Foreign Service (SFS), Senior Executive Service (SES), Foreign Service National Direct-Hires Cooperating Country National (CCN) and Third Country National (TCN) Personal Services Contractors, U.S. Personal Services Contractors, Resident Hires U.S. Personal Services Contractors, Administratively Determined (AD), and non-career SES staff. **(Chapter 114)**

Work Environment

The term work environment is used to describe the surrounding conditions in which staff operates. The work environment involves the physical geographical location as well as the immediate surroundings of the workplace (*e.g.*, office temperature, equipment, or personal computers). It can also involve related factors such as work processes or procedures. **(Chapter 114)**