



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

1.20.3

NOVEMBER 9, 2021

EFFECTIVE DATE

(11-09-2021)

PURPOSE

- (1) This transmittal revises the IRM 1.20.3, Equity, Diversity, and Inclusion guidance for management officials and employees on the process for handling allegations of general harassment; non-sexual or sexual harassment; and/or bullying; and reporting of allegations.

MATERIAL CHANGES

- (1) Revisions to IRM 1.20.3 provides information about allegations of general harassment ; non-sexual or sexual harassment, and/or bullying and how they are handled and reported at the IRS.

EFFECT ON OTHER DOCUMENTS

None

AUDIENCE

All IRS employees

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1.20.3

Handling Harassment Allegations

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1.20.3.1
(11-09-2021)
Program Scope and Objectives

- (1) **Purpose.** The Internal Revenue Service (IRS) is committed to fostering a model workplace free of conduct that negatively affects employee engagement and productivity. Every effort must be made to prevent harassment and bullying in general, and in particular harassment based on protected characteristics (i.e., race, color, sex (including pregnancy, sexual orientation, gender identity, and transgender status), national origin, religion, age (40 and over), disability (mental or physical), parental status, protected genetic information, and participation in protected equal employment opportunity (EEO) activity). The purpose of the Anti-Harassment (AH) policy is to prevent or mitigate harm to any employee subjected to harassment or bullying. As such, the AH policy seeks to address harassing and bullying conduct before it reaches the level of unlawful harassment.
- (2) The AH policy supplements, but does not replace, existing EEO complaint procedures under *29 C.F.R. Part 1614* or collective bargaining grievance procedures. The AH policy applies whether the employee has sought relief through another course of action, including an EEO administrative complaint, Merit Systems Protection Board (MSPB) appeal, or negotiated grievance.
- (3) **Audience.** This information is for all IRS employees.
- (4) **Policy Owner.** The IRS Chief Diversity Officer has overall responsibility for the Anti-Harassment Program.
- (5) **Program Owner.** The Civil Rights and Anti-Harassment Division of the Office of Equity, Diversity & Inclusion is primarily responsible for operating the Anti-Harassment program.

1.20.3.1.1
(11-09-2021)
Background

- (1) On February 15, 2021, IRS Commissioner Charles P. Rettig signed a revised memorandum that commits the IRS to fostering a model workplace free of conduct that negatively impacts employee engagement and productivity. The IRS' goal is to address and eradicate any potentially harassing conduct. To achieve this goal, it is imperative that any conduct that is perceived to be unwelcome, hostile, and/or abusive be reported to a management official immediately.

1.20.3.1.2
(11-09-2021)
Authorities

- (1) Title VII of the Civil Rights Act of 1964, as amended, *42 USC 2000e-16*
- (2) The Civil Service Reform Act, *5 USC 2302(b)(10)*
- (3) *Executive Order 11478*, as amended May 28, 1998
- (4) *Equal Employment Opportunity Commission Management Directive 715, Federal Responsibilities Under Section 717 of Title VII and Section 501 of the Rehabilitation Act* (December, 2019)
- (5) *Equal Employment Opportunity Commission, "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors,"* No. 915.002 (June 18, 1999).
- (6) *Burlington Industries v. Ellerth* 524 U.S. 742 (1998)
- (7) *Faragher v. Boca Raton*, 524 U.S. 775 (1998)
- (8) *Harris v. Forklift Systems, Inc.* 510 U.S. 17 (1993)

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- (9) *Rosamaria F. v. Department of the Navy, EEOC Appeal No.:0120181068 (February 14, 2020)*
- (10) IRM 1.2.1.2.7, Policy Statement 1-38 (Rev. 1), Equal Employment Opportunity)
- (11) 2019 National Agreement Internal Revenue Service and National Treasury Employees Union; and
- (12) *Department of Treasury, Office of Civil Rights and Diversity, Procedures for Addressing Allegations of Discriminatory Harassment, Civil Rights and Diversity Issuance System No. CRD-009, (June 28, 2019)*

1.20.3.1.3 (11-09-2021) Responsibilities

- (1) The IRS has zero tolerance for discriminatory harassing conduct against an employee or applicant for employment based on a protected characteristic. Moreover, the IRS won't tolerate harassment or bullying of any kind.
- (2) Employees are protected from harassment by non-employees, and the IRS may be held accountable for harassment by non-employees in work-related situations. Furthermore, the IRS may address harassment by an employee toward another employee under the AH policy, even if the harassment took place outside of the workplace and during off-duty hours.
- (3) The conduct covered by the AH policy is broader than the legal definition of unlawful harassment. The goal of the AH policy is to stop unwelcome conduct before it rises to the level of unlawful harassment and to prevent non-sexual, or sexual harassment, and/or bullying from occurring. Through enforcement of the AH policy, and by educating all employees, the IRS seeks to prevent, address, and correct behavior that violates the AH policy.
- (4) The IRS' goal is to address and eradicate any potentially harassing conduct. To achieve this goal, it is imperative any conduct that is perceived to be unwelcome, hostile, and/or abusive be reported to a management official as soon as possible. Should any unwelcome, hostile, and/or abusive conduct occur, the AH policy sets forth procedures for immediate and appropriate investigation and corrective action. Importantly, if warranted, corrective action may include disciplinary or adverse action.

1.20.3.1.4 (11-09-2021) Program Management and Review

- (1) The IRS Chief Diversity Officer will annually evaluate IRS' Anti-Harassment program (AHP). An effective Anti-Harassment program is part of a model EEO program, and a workplace free of discriminatory harassment, non-sexual, or sexual harassment, and/or bullying to prevent harassment on all protected bases, including race, color, religion, sex (sexual or non-sexual), national origin, age, disability, reprisal. The AHP compliance results must be included in the *IRS's Equal Employment Opportunity Commission Management Directive 715, Part G, Report to the Department of the Treasury.*

1.20.3.1.5 (11-09-2021) Program Controls

- (1) The IRS Management Directive 715, Part G, Report to the Department of the Treasury and Pursuant to Part V(C)(1) of the Enforcement Guidance should include a discussion of the following:
 - a. Accessibility of the Anti-Harassment policy to employees, applicants, contractors, and vendors e.g., posted on the Internet, Intranet, for dissemination yearly, and available in alternative formats, such as Braille.
 - b. A clearly described Anti-Harassment complaint process that provides accessible avenues for complainants.

- c. A clear explanation of prohibited conduct; including examples of specific claims of harassment, non-sexual or sexual, and/or bullying.
- d. Anti-Harassment complaint process that provides a prompt, thorough, and impartial investigation.
- e. Assurance the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.
- f. Allegations are addressed within specified timeframe once notification is given to agency .
- g. Assurance the employees who make complaints of harassment or provide information related to such complaints will be protected against retaliation.
- h. Assurance the employer will protect the confidentiality of the individuals bringing harassment complaints to the extent possible.

1.20.3.1.6
(11-09-2021)
**Terms/Definitions/
Acronyms**

- (1) **Administrative complaint** - An administrative complaint is a broad term meant to include any other forum in which an employee can raise issues, such as the Agency Grievance System, described in IRM 6.771, Agency Grievance System.
- (2) **EEO complaint** - An EEO complaint may be either informal or formal filed pursuant to the laws and regulations under the jurisdiction of the Equal Employment Opportunity Commission (EEOC). For an EEO complaint pursuant to *29 C.F.R. Part 1614*, contact an EEO counselor in the Office of Equity, Diversity & Inclusion within forty-five (45) calendar days from the most recent incident of alleged harassment (or from the effective date of a personnel action if one is involved), as required in *29 C.F.R. 1614.105 (a)* An employee may initiate contact with an EEO Counselor by sending an email message via **EEO (*EEO@irs.gov)*.
- (3) **Negotiated grievance** - A negotiated grievance is filed by a bargaining unit employee , in accordance with the provisions of the National Treasury Employees Union (NTEU). NTEU-IRS National Agreement, within forty-five (45) calendar days of the incident or the employee’s learning of the incident.
- (4) **The Merit Systems Protection Board (MSPB)**. The Merit Systems Protection Board is an independent, quasi-judicial agency in the Executive branch that promotes an effective Federal workforce free of Prohibited Personnel Practices. To appeal to the MSPB pursuant to *5 C.F.R. 1201.22*, file a written appeal with the MSPB within thirty (30) calendar days of the effective date of an appealable adverse action as defined in *5 C.F.R. 1201.3*, or within thirty (30) calendar days of the date of receipt of the agency’s adverse action decision, whichever is later.
- (5) The following table provides a list of **Acronyms** used throughout this IRM.

Acronym	Definition
AH	Anti-Harassment
AHP	Anti-Harassment Program
EDI	Equity, Diversity and Inclusion
EEO	Equal Employment Office

Acronym	Definition
EEOC	Equal Employment Opportunity Commission
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
MSPB	Merit Systems Protection Board
NTEU	National Treasury Employees Union
SIU	Special Investigations Unit
TIGTA	Treasury Inspector General for Tax Administration

1.20.3.2 (11-09-2021)

Legal Definition of Unlawful Harassment

- (1) To establish a viable claim of harassment, a complainant must show:
 1. Membership in a statutorily protected class;
 2. Subjection to unwelcome verbal or physical conduct involving the protected class;
 3. The harassment was based on membership or affiliation to the statutorily protected class;
 4. The harassment had the effect of unreasonably interfering with complainant's work performance and or created an intimidating, hostile, or offensive work environment; and
 5. There is a basis for imputing liability to the employer. See *Omelas v. Department of Justice, EEOC Appeal No. 01995301 (2002)*.
- (2) **Harassment:** Harassment is hostile or abusive conduct based on a protected characteristic (i.e., race, color, sex (including pregnancy, sexual orientation, gender identity, and transgender status), national origin, religion, age (40 and over), disability (mental or physical), parental status, protected genetic information, and participation in protected equal employment opportunity (EEO) activity).
- (3) **Unlawful Harassment:** Unlawful harassment is a form of prohibited employment discrimination. Unlawful harassment includes hostile or abusive conduct based on a protected characteristic where:
 - a. such conduct by a supervisor culminates in a tangible employment action (i.e., a significant change in employment status or benefit); or
 - b) the conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges of the employee's employment, unreasonably interferes with work performance, or otherwise creates a working environment which a reasonable person would consider intimidating, hostile, or abusive.

1.20.3.2.1 (11-09-2021)

Examples of Harassing Conduct

- (1) **General harassment** may include, but is not limited to:
 - Making derogatory comments or displaying offensive behavior about a person's religious beliefs or any other protected characteristic

- Making offensive or insulting comments about skin color, ethnic traits, or age
 - Making offensive gestures or negative comments about a mental or physical disability.
 - Sharing inappropriate images, videos, letters or notes
 - Making offensive or negative comments about a co-worker or employee because of a protected characteristic
 - Wearing offensive clothing that displays inappropriate images in the workplace
 - Using racist slurs or slang phrases; or
 - Displaying drawings, posters, cartoons, or images in the workplace offensive to other people based on any protected characteristic.
- (2) While the single use of an epithet that offends another employee will typically not rise to the level of unlawful harassment, it is the IRS' policy that such conduct is inappropriate in the workplace and won't be tolerated.
- (3) **Cyber-harassment** - Cyber-harassment or cyber-bullying involves using electronic devices, including cellular phones and computers, to transmit harassing or bullying text or images via text message, email, social media sites (e.g., Facebook, Twitter, Snapchat, Tik Tok, etc.) or blogs (e.g., Blogger, Wordpress, Tumblr, etc.). Although cyber-bullying is currently not recognized as a legal cause of action under Federal anti-discrimination laws, cyber-bullying based on a protected characteristic that constitutes unlawful harassment is prohibited. Regardless of the reason such activity occurs, cyber-bullying, for any reason, is against the IRS Rules of Conduct and is prohibited by the AH policy. Making derogatory comments or displaying offensive behavior about a person's religious beliefs or any other protected characteristic
- (4) Examples of cyber-harassment or cyber-bullying include, but are not limited to:
- Posting comments or rumors about someone online that are mean, hurtful, or embarrassing
 - Threatening to hurt someone or telling them to kill themselves
 - Posting a mean or hurtful picture or video
 - Pretending to be someone else online to solicit or post personal or false information about someone else
 - Posting mean or hateful names, comments or content about any race, religion, ethnicity, or other personal characteristics online
 - Creating a mean or hurtful webpage about someone
 - Doxing, which is a form of online harassment used to exact revenge and to threaten to destroy the privacy of individuals by making their personal information public, including addresses, Social Security Number, credit card and phone numbers, links to social media accounts, and other private data.
- (5) **Sexual Harassment** : Sexual harassment is one form of harassment prohibited by the AH policy and refers to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. The harasser may be the same sex or a different sex from the targeted person. Such conduct constitutes sexual harassment when:
- a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment
 - b. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

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- c. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- (6) Examples of sexual harassing conduct may include, but are not limited to:
 - Remarks about a person's appearance, clothing, body parts, or activities
 - Physically blocking a person's movement or standing in their way
 - Descriptions of sexual acts
 - Staring or looking a person's body up and down
 - Following an individual around or paying excessive attention to them
 - Telling lewd jokes or sharing stories about sexual experiences
 - Sending unwanted suggestive or lewd emails, letters or other communications (including those shared via social media sites (e.g., Facebook, Twitter, Snapchat, Tik Tok, etc.) or blogs (e.g., Blogger, Wordpress, Tumblr, etc.))
 - Sharing images of a sexual nature around the workplace, or displaying posters, pictures, items, or screensavers of a sexual nature
 - Inappropriate and suggestive touching, kissing, rubbing or caressing of a person's body and/or clothing
 - Pressure for dates, despite repeated declinations
 - Repeated requests for sexual favors; and
 - Making sexually offensive gestures, remarks or facial expressions.
 - (7) The EDI Anti-Harassment Program Coordinator, or delegate, will report sexual harassment allegations to TIGTA within ten (10) calendar days of receiving notice of such allegations. The report provided by the EDI Anti-Harassment Program Coordinator, or delegate, to TIGTA should include the specific nature of the incident, the date and place of the incident, the names of the parties involved, as well as all pertinent facts. Notification to TIGTA does not remove the requirement that Management perform an inquiry and immediately address sexual harassment allegations.
 - (8) Based on the information provided by the EDI Anti-Harassment Program Coordinator, TIGTA will determine whether it will conduct a separate investigation of the sexual harassment allegation. Regardless of whether TIGTA pursues a separate investigation of the sexual harassment allegation, the IRS' inquiry will continue. Also, if the sexual harassment allegations arose through the EEO process, the EEO process will continue regardless of whether TIGTA takes jurisdiction of the allegation
 - (9) **Retaliatory Harassment:** Retaliatory harassment is harassing conduct based on a person's prior protected EEO activity. For instance, an employee is protected under Federal anti-discrimination laws from retaliation for having filed an EEO complaint, or testifying, assisting, or participating in any manner in an EEO investigation, proceeding, or hearing. In addition, an employee is protected from retaliation for engaging in reasonable opposition to any practice made unlawful under Federal anti-discrimination laws. Moreover, an employee is protected from retaliation for having requested a reasonable accommodation for a disability or religious belief. Even if the retaliatory harassment is not severe or pervasive enough to create a hostile work environment, retaliatory harassment may be unlawful if it could deter a reasonable person from asserting their EEO rights.
 - (10) **Bullying** - Bullying occurs when an individual engages in repeated, unreasonable actions intended to intimidate, degrade, offend, humiliate, or marginalize

the target person or group. Although bullying is currently not recognized as a legal cause of action under Federal anti-discrimination laws, bullying based on a protected characteristic that constitutes unlawful harassment is prohibited. Regardless of the reason such activity occurs, bullying, for any reason, is against the IRS Rules of Conduct and is prohibited by the AH policy.

- (11) Examples of workplace bullying conduct may include, but are not limited to:
 - Unwarranted or invalid criticism
 - Blame without factual justification
 - Being treated differently from the rest of your work group
 - Being sworn at
 - Exclusion or social isolation
 - Being shouted at or being intentionally humiliated; and
 - Being the target of practical jokes.

- (12) The following conduct typically would not constitute harassing conduct and is not covered by the AH policy:
 - a. Petty slights and trivial annoyances, a lack of good manners or personality conflicts. For example, saying or doing something in a playful manner to annoy or cause a reaction; lack of good manners (e.g., not saying good morning, please, thank you, humming or singing loudly to music, even though headphones are being used, etc.); miscommunications (e.g., having a misunderstanding, disagreement, or lack of guidance/direction); or personality conflicts (e.g., individuals having differing communication styles).
 - b. Reasonable management actions in support of the work or directions to employees to perform work. For example, reasonable management actions in support of the work (i.e., providing performance feedback, directing employees to meet with a manager, advising of conduct or time and attendance concerns, monitoring or tracking these and/or the work area/work environment for reasonable business reasons) and/or assigning work and directions to employees to perform work.

1.20.3.3
(11-09-2021)
Preventing Harassment

- (1) **Employees:** Employees are responsible for reporting harassing conduct or bullying. While isolated incidents of harassment or bullying generally do not violate Federal anti-discrimination laws, a pattern of incidents may.
 - a. Employees should take advantage of the preventative or corrective opportunities provided by the AH policy.
 - b. Employees who report harassment or bullying may do so anonymously, or otherwise ask that their names not be disclosed to others.
 - c. Employees who know of or witness what they believe to be harassment or bullying must report the matter in a manner described above.

- (2) **Management:** If Management receives a report of harassment, sexual harassment, or bullying, Management must immediately address all allegations in the manner outlined in the AH policy.
 - a. Allegations of non-sexual, or sexual harassment, and/or bullying involving another manager's employee should be reported to the appropriate manager in that employee's chain of command within one (1) business day.

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- b. If Management is unsure to whom to report such allegations, the EDI Anti-Harassment Program Coordinator can assist in determining the appropriate manager.
 - c. Management must report all non-sexual, or sexual harassment, and/or bullying allegations to the Anti-Harassment Program Coordinator, via the EDI Anti-Harassment Mailbox (**EDI AHP Mailbox*) within one (1) business day of becoming aware of the allegation.
 - d. Reporting the allegation to the EDI Anti-Harassment Program Coordinator or to TIGTA, however, does not remove the requirement for management to immediately address the allegation.
 - e. The EDI Anti-Harassment Program Coordinator, or their Designee, will, as appropriate, provide guidance to management on conducting a Management Inquiry.
 - f. Ignoring a report of alleged harassment is not an option and doing so may subject the Agency to liability and the manager who failed to report the allegation to corrective action, including disciplinary action where appropriate.
- (3) If individuals believe their own behavior (jokes, comments, etc.) have been misunderstood, they should quickly explain and apologize. It is better to be overly cautious and refrain from certain jokes and comments in the workplace than to take the chance of offending colleagues.

1.20.3.3.1
(11-09-2021)

Reporting Harassment

- (1) Any employees who believe they have been subjected to non-sexual, or sexual harassment, and/or bullying are encouraged to inform the alleged offender verbally or in writing such conduct is unwelcome, it is offensive, and it must stop.
- (2) If an employee does not wish to communicate directly with the alleged offender, if such communication has been ineffective, or if the alleged offender is a manager who controls or otherwise affects the employee's terms and conditions of employment, the employee can report an allegation of non-sexual, or sexual harassment, and/or bullying to any of the following individuals or options:
 1. Their supervisor;
 2. The supervisor of the employee engaging in the harassing or inappropriate conduct
 3. Another supervisor or other management official inside or outside of the employee's chain-of-command
 4. The EDI Anti-Harassment Program Coordinator via the **EDI AHP* mailbox (EDI.AHP.Mailbox@irs.gov)
 5. Submit Form 15259, Complaint of Harassment/Bullying
 6. The IRS Sexual Harassment Hotline at 469-801-1599 or 866-298-7672; or
 7. The Treasury Inspector General for Tax Administration (TIGTA) Special Investigations Unit (SIU) Mailbox via *SIU@tigta.treas.gov*
- (3) Employees who know of non-sexual, or sexual harassment, and/or bullying or witness what they believe to be non-sexual, or sexual harassment, and/or bullying must report the matter in a manner described above.

- (4) Reporting non-sexual, or sexual harassment, and/or bullying to any of the individuals provided above does not constitute initiation of the EEO process or grievance procedures and does not delay the time limits for initiating such actions.
- (5) Even if an employee reports the conduct to Management, to the EDI Anti-Harassment Program Coordinator, through the IRS Sexual Harassment Hotline, or to TIGTA:
 - a. The employee has forty-five (45) calendar days from the date of the alleged harassing conduct to initiate the informal EEO process by contacting an EEO Counselor.
 - b. If an employee seeks EEO counseling over an allegation of harassment or bullying, the EEO Counselor will report allegations of non-sexual, or sexual harassment, and/or bullying to the EDI Anti-Harassment Program Coordinator for a Management Inquiry.
 - c. For more information on the EEO process, refer to IRM 1.20.3.10, Filing EEO Complaints, Administrative Complaints , or Negotiated Grievances.

1.20.3.3.2
(11-09-2021)
Confidentiality and Reprisal

- (1) **Confidentiality:** Reports of non-sexual, or, sexual harassment, and/or bullying will be kept confidential to the extent reasonably possible. Disclosures about allegations of non-sexual, or sexual harassment, and/or bullying will be made only on a “need to know” basis, in order to determine the facts surrounding the allegation and to take appropriate action.
- (2) **Protection Against Retaliation:** Retaliation against persons who make claims of non-sexual, or sexual harassment, and/or bullying, or who otherwise participate in the fact-finding process regarding such claims, won’t be tolerated and should be immediately addressed pursuant to the procedures in the AH policy. Such retaliation is prohibited and may result in disciplinary action.

1.20.3.4
(11-09-2021)
Management and Management Official Responsibilities

- (1) The **Deciding Official** is responsible for making a decision based on the gathered information about the allegations raised by the alleging employee and for recommending any necessary actions to correct the work environment. The Deciding Official is also responsible for assigning the Inquiry Official to conduct the fact-finding, and with meeting with the alleging employee and the alleged harasser to conduct close-out discussions about the inquiry.
- (2) The **Inquiry Official** is appointed by the Deciding Official and is responsible for gathering all relevant and necessary information so they can make a fact-based assessment of the employee’s allegations. The Inquiry Official may recommend any necessary follow up to be taken to correct the work environment.
- (3) The **EDI Anti-Harassment Program Coordinator** is responsible for ensuring the Management officials conduct a full and timely inquiry in compliance with the AH Policy.

1.20.3.4.1
(11-09-2021)

Management Inquiry, Reporting, and Corrective Action

- (1) The EDI Anti-Harassment Program Coordinator, or Designee, will assist Management in conducting an inquiry into allegations of harassment, sexual harassment, and/or bullying as appropriate. Guidance, direction, and assistance are provided by the Anti-Harassment Program to Management to ensure relevant information is obtained, and the process is completed, within the stipulated timeframes as described below.
- (2) There may be an occasion in which an employee confides in Management they are being harassed but does not want any action taken. The employee's request notwithstanding, Management is still obligated to report the allegation(s) to the EDI Anti-Harassment Program Coordinator, or Designee. By making a manager aware of an allegation of non-sexual, or sexual harassment, and/or bullying, by extension the IRS has been made aware. As such, the EDI Anti-Harassment Program Coordinator, or their Designee, will initiate a Management Inquiry to determine whether harassment occurred and, if warranted, to ensure immediate, effective, corrective action is taken to stop the inappropriate and potentially unlawful behavior.
- (3) After receiving notification of such allegations, the EDI Anti-Harassment Program Coordinator, or Designee, will:
 - a. Immediately acknowledge receipt of the allegation(s)
 - b. Identify and notify the appropriate Management official at least two levels above the supervisory level of the employee raising the allegation to act as the Deciding Official (the Deciding Official must have authority to impose disciplinary action, if warranted, to address the allegation)
 - c. Ensure the Deciding Official appoints an Inquiry Official (fact-finding) who will conduct the inquiry to gather all facts pertaining to the allegation; and
 - d. Provide guidance to the Inquiry Official to ensure a thorough inquiry is conducted
- (4) Management must conduct an immediate inquiry to determine the frequency and severity of the alleged non-sexual, or sexually harassing, and/or bullying conduct and, where appropriate, take steps to ensure no further non-sexual, or sexually harassing, and/or bullying occurs. Absent extenuating circumstances, within **ten (10) calendar days** after notice of the allegation, the Agency will initiate the inquiry process to determine:
 - a. What conduct is at issue
 - b. The parties involved
 - c. Any pertinent facts available (e.g., the nature, date, and place of the incident)
 - d. Whether any immediate corrective action is required to insulate the alleged victim from further non-sexual, or sexual harassment, and/or bullying; and
 - e. What action is necessary and appropriate to otherwise address the allegation
- (5) Management should record its activities and findings of the inquiry in writing. The scope and formality of the inquiry is determined on a case-by-case basis, depending on the nature and complexity of the allegations. Inquiries should consist of interviews with all persons with relevant information, including the individual accused of the harassing conduct, and a review of any written or electronic information related to the alleged conduct. Management should take appropriate steps to ensure no further harassment or bullying occurs. Absent

extenuating circumstances, Management should complete its full inquiry within thirty (30) calendar days from notification of the non-sexual or sexually harassing, and/or bullying conduct.

- (6) In addition, Management must inform employees who make reports of discriminatory harassment or sexual harassment of the employee's right to seek EEO counseling and the requirement to initiate such EEO contact within the 45 calendar days. The applicable timeframes are provided in the AH policy under IRM 1.20.3.10, Filing EEO Complaints, Administrative Complaints, or Negotiated Grievances.
- (7) Within one business day, a supervisor or manager who becomes aware of alleged harassment must notify the following appropriate officials:
 - a. The harassing employee's supervisor and office director, unless the conduct implicates the supervisor or the office director, then notify the EDI Anti-Harassment Program Coordinator or Designee.
 - b. The victim's supervisor and office director, unless the conduct implicates the supervisor or the office director, then notify the EDI Anti-Harassment Program Coordinator or Designee.
- (8) Supervisors and directors who receive the report will notify the EDI Anti-Harassment Program Coordinator or Designee and provide a description of any initial steps taken to address the reported allegations.
- (9) If contacted regarding a complaint of harassment, managers should **never** refer the employee to another manager or tell the individual they can't assist or direct the employee to another source, so the individual is deterred from further reporting.
- (10) EDI Anti-Harassment Program Coordinator, or their Designee, will initiate a Management Inquiry to determine whether harassment occurred and, if warranted, to ensure immediate, effective, corrective action is taken to stop the inappropriate and potentially unlawful behavior.
- (11) After receiving notification of such allegations, the EDI Anti-Harassment Program Coordinator, or Designee, will:
 - a. Immediately acknowledge receipt of the allegation
 - b. Identify and notify the appropriate Management official at least two levels above the supervisory level of the employee raising the allegation to act as the Deciding Official (the Deciding Official must have authority to impose disciplinary action, if warranted, to address the allegation)
 - c. Ensure the Deciding Official appoints an Inquiry Official (fact finder) who will conduct the inquiry to gather all facts pertaining to the allegation; and
 - d. Provide guidance to the Inquiry Official to ensure a thorough inquiry is conducted
- (12) If it is determined non-sexual, or sexual harassment, and/or bullying occurred, Management will act immediately to ensure the improper conduct does not recur. Management must take appropriate corrective action, including disciplinary action where appropriate. In addition, Management must take appropriate corrective action, which may include disciplinary action, even if the alleged victim requests no action be taken.
- (13) Management will determine the appropriate corrective action by reviewing the report submitted by the Inquiry Official, and as appropriate, consulting with the

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Anti-Harassment Program Coordinator or Designee, and the Labor Relations office. Management should always consult with the Labor Relations office prior to taking any disciplinary or adverse actions against employees and may contact Chief Counsel, when desired. Management shouldn't implement any corrective actions until these consultations have taken place.

- (14) Ignoring a report of alleged harassment may subject the agency to liability for damages and possibly subject the manager to disciplinary action.

1.20.3.4.2
(11-09-2021)

Close-Out Briefing

- (1) The Deciding Official will provide an alleged victim a close-out briefing. The briefing may be conducted verbally or in writing as dictated by circumstances and at the discretion of the Deciding Official. The Deciding Official will document, for the record, the Close-Out Briefing occurred.
- (2) The close-out briefing will notify the alleged victim that the Management Inquiry was conducted and the work environment will continue to be monitored to ensure no inappropriate conduct occurs. However, in accordance with the Privacy Act, if the Agency took corrective action, including disciplinary or adverse action, against the offending employee, this information won't be provided in the close-out briefing or otherwise shared with the alleged victim.
- (3) Because there may be additional requirements to provide a close-out briefing to a Bargaining Unit employee alleged to have engaged in harassing or bullying behavior, Management is advised to consult with the Labor Relations office about such matters.
- (4) The Deciding Official will provide the alleged harasser with a close-out briefing during which that individual will be notified of what, if any, corrective actions will be taken. If it is determined an adverse action is warranted, the information from the inquiry that is the basis for the adverse action will be shared with an individual against whom disciplinary or adverse action is proposed. Information gathered during the inquiry will be made available to the EEO Investigator if an EEO complaint is filed and accepted by Treasury on the same or a related matter.

1.20.3.5
(11-09-2021)

Monitoring the Work Environment

- (1) Each Business Operating Division is responsible for ensuring its offices are in full compliance with the AH policy. Supervisors and managers are responsible for monitoring the work environment, especially after a reported allegation of non-sexual, or sexual harassment, and/or bullying.
- (2) When necessary, supervisors should conduct a subsequent Management Inquiry to ensure no further non-sexual or sexual harassment, and/or bullying, or retaliation have occurred.

1.20.3.6
(11-09-2021)

Release of Inquiry Report

- (1) Employees raising allegations in accordance with the AH policy **won't** receive a copy of the Inquiry Report. Any report or other documentation is considered an internal, management document pertaining to another person and is protected by the Privacy Act.
- (2) If Management's corrective action includes disciplinary or adverse action, the information from the inquiry which was used as the basis for the disciplinary or adverse action, including the relevant portions of the Inquiry Report, will be shared with those against whom disciplinary or adverse action has been proposed.

- (3) If a formal EEO complaint is filed and accepted by the Department of Treasury on the same or a related matter, any information gathered during the internal inquiry, including the Inquiry Report, will be made available to the Department of Treasury.

1.20.3.7
(11-09-2021)
Appeals Rights

- (1) There are no appeal rights, reconsideration, or other redress associated with the processing of allegations under the Anti-Harassment policy.

1.20.3.8
(11-09-2021)
Administrative Time

- (1) Employees are entitled to a reasonable amount of administrative time to present their allegations or respond to agency requests for information while pursuing allegations or serving as a witness under the AH policy. Prior to meeting with an Anti-Harassment Specialist, employees must request and obtain approval for administrative time from management. The employee must submit their request in writing, with as much advanced notice as possible, preferably no later than five (5) business days in advance, and provide the following in their request:
 - The amount of administrative time being requested
 - The stage of the process (e.g., initial meeting, follow-up meeting, etc.); and
 - An explanation of how the employee determined the amount of time requested

1.20.3.9
(11-09-2021)
Representation

- (1) Any Bargaining Unit employee involved in the investigation of allegations under the AH policy (where the EEO, MSPB, and negotiated grievance processes haven't been initiated) are entitled to NTEU representation only.
- (2) These individuals will be issued Form 8111, Employee Notification Regarding Union Representation, in accordance with provisions of the NTEU-IRS National Agreement which permits a person designated by the union to represent the employee during the interview, if the employee desires such representation. No other representation (e.g., attorney, family member, friend, advocate, etc.) is permitted.

1.20.3.10
(11-09-2021)
Filing EEO Complaints, Administrative Complaints or Negotiated Grievances

- (1) The purpose of the AH policy and the procedures identified in the AH policy is to ensure the IRS takes appropriate actions to end non-sexual or sexual harassment, and/or bullying. In contrast, the EEO process is designed to make an employee who was subject to discriminatory non-sexual or sexual harassment whole or to provide remedial relief. Corrective action under the AH policy won't provide certain remedies available to the employee (e.g., compensatory damages) through the EEO administrative complaint, MSPB appeal, or negotiated grievance processes.
- (2) Filing an allegation of unlawful harassment under the AH policy **won't** satisfy the requirements for filing an EEO complaint, MSPB appeal, or negotiated grievance and may not result in providing remedies available through those processes. Additionally, filing an allegation of unlawful harassment under the AH policy **won't** delay the time limits for initiating the aforementioned processes.
- (3) An employee who chooses to pursue statutory, administrative, or collective bargaining remedies for unlawful harassment must elect one of the available forums as follows:

1.20 Equal Employment Opportunity and Diversity

- a. For an EEO complaint pursuant to *29 C.F.R. Part 1614*, contact an EEO counselor in the Office of Equity, Diversity & Inclusion within forty-five (45) calendar days from the most recent incident of alleged harassment (or from the effective date of a personnel action if one is involved), as required in *29 C.F.R. 1614.105(a)(1)*. EEO counselor contact information is provided in the “Where Do I Go For EEO?” document located on the *Employee Resource Center website* on the IRS intranet. An employee may also initiate contact with an EEO Counselor by sending an email message via **EEO (*EEO@irs.gov)*.
- b. If an employee initiates contact with an EEO Counselor alleging non-sexual, or sexual harassment, and/or bullying, the EDI Informal Complaints Section will, within five (5) calendar days, notify the EDI Anti-Harassment Program Coordinator that such an allegation was raised. Even if the employee has exercised the right to anonymity during the informal counseling process, the EEO Counselor still must report the allegations to the EDI Anti-Harassment Program Coordinator. Employees who report non-sexual, or sexual harassment, and/or bullying may do so anonymously, or otherwise ask that their names not to be disclosed to others. The assigned EEO Counselor will notify the employee of the referral to the EDI Anti-Harassment Program Coordinator. This notification to the EDI Anti-Harassment Program Coordinator won’t stop or postpone the EEO process.
- c. For an appeal to the MSPB pursuant to *5 C.F.R. 1201.22*, file a written appeal with the MSPB **within thirty (30) calendar days** of the effective date of an appealable adverse action as defined in *5 C.F.R. 1201.3*, or **within thirty (30) calendar days** of the date of receipt of the agency’s adverse action decision, whichever is later.
- d. For a negotiated grievance, file a written grievance in accordance with the provisions of the NTEU-IRS National Agreement, within **forty-five (45) calendar days** of the incident or the employee’s learning of the incident.
- e. The IRS’s liability for a finding of unlawful harassment in an EEO complaint, MSPB appeal, or negotiated grievance may depend upon whether the agency was aware of and immediately corrected the hostile or abusive conduct. Therefore:
- f. The EDI Anti-Harassment Program Coordinator must be informed of all allegations of harassment, sexual harassment, or bullying. Thus, the EEO Counselor responsible for EEO complaint processing, or the responsible Labor Relations Specialist processing an MSPB appeal or negotiated grievance who receives notice of such claim, shall immediately notify the EDI Anti-Harassment Program Coordinator of the allegation via the **EDI AHP Mailbox (*EDI.AHP.Mailbox@irs.gov)*.