I. **Scope**

The purpose of this policy is to affirm the Board’s commitment to a workplace free from harassment. The Board is taking all reasonable steps toward preventing harassment in the workplace and correcting any harassment that occurs before it becomes severe or pervasive.

II. **Definitions**

A. *Board or PCLOB*: The Privacy and Civil Liberties Oversight Board created pursuant to 42 U.S.C. § 2000ee.

B. *Board Member or Member*: Any of the individual members of the Board, including the Chairman.

C. *Chairman*: The Chairman of the Board.

D. *EEO Counselor*: An employee inside or outside of the Board, designated by the EEO Officer, who meets with a complainant to explain the EEO process, frames the legal claim of discrimination, and attempts informal resolution of the matter.

E. *Harassment*: Unwelcome verbal or physical conduct based on an individual’s race, color, religion, national origin, sex (including pregnancy, sexual orientation, and gender identity), age, disability, genetic information, or reprisal for protected EEO activity. Harassment becomes unlawful when –

1. Enduring the conduct becomes a condition of continued employment;

2. Conduct is so severe or pervasive that it creates a hostile working environment; or

3. Supervisor’s harassing conduct results in a concrete change in an individual’s job or benefits, such as firing or demotion.
E. **Reprisal:** An action that is taken against an individual who has reported harassing conduct or assisted in an inquiry about harassing conduct that is designed to punish, or chill further reports in opposition to harassing conduct.

F. **Staff or Staff Member:** All current and former federal and nonfederal employees, including permanent and temporary full-time and part-time employees (such as paid and unpaid interns and individuals detailed to the Board). In limited circumstances, as determined by the EEO Officer, contractors may be considered staff regarding the applicability of this policy.

G. **Supervisor:** A PCLOB employee with the authority to recommend tangible employment decisions affecting a subordinate employee.

III. **Policy**

It is the policy of the Board to promote and maintain a work environment free from harassment. Harassing conduct includes, but is not limited to, slurs, epithets, ridicule, negative stereotyping, insults, jokes, objects or pictures, intimidation, threats, or assaults that are related to race, color, national origin, sex, religion, age, disability, genetic information, sexual orientation, gender identity, or retaliation.

A. The harasser can be a supervisor, co-worker, or non-employee (e.g. trainee, contractor). The person who alleges harassment does not have to be the person harassed, but can be anyone impacted by the conduct.

B. An inquiry will be conducted into allegations of harassment. Information obtained during inquiries will be held in confidence to protect the privacy of the alleged victim and accused, and will be disclosed only on a "need to know" basis in order to resolve matters. The Board will take prompt corrective action as deemed appropriate to correct harassing conduct.

C. Reprisal or retaliation against anyone who engages in the equal employment opportunity "EEO" process or the anti-harassment process will not be tolerated. Complaints of reprisal or retaliation for reporting harassing conduct under this policy will be addressed in accordance with this policy.

D. A hostile work environment claim requires demonstration of a pattern of harassment. Isolated incidents of unwelcome conduct generally do not violate federal law. To be unlawful, the conduct must create a work environment that would be hostile, intimidating, or offensive to a reasonable person. For the purpose of this policy, the "reasonable person" standard considers the aggrieved person's perspective and assesses whether a reasonable person exposed to the same or similar circumstances would find the environment hostile, intimidating, or offensive.
E. The Board will not wait for patterns of harassing conduct to become severe or pervasive. Instances of harassment that do not rise to the level of unlawful harassment actionable under federal law (e.g., Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008; the Genetic Information Non-Discrimination Act of 2008; or Executive Order 11478 – Equal Employment Opportunity in the Federal Government, as amended by Executive Order 13087 of May 1998) will be addressed by supervisors to prevent that harassment from becoming severe or pervasive.

IV. Responsibilities

A. All Employees – Each Board and Staff Member is responsible for:

1. Acting professionally and refraining from harassing conduct; and

2. Becoming familiar with the provisions of this policy and complying with all requirements of the policy.

B. Supervisors – All supervisors are responsible for:

1. Taking prompt and appropriate actions to prevent harassment in the workplace, and to assist in inquiries of harassment;

2. Taking immediate steps to stop harassment once it is reported;

3. Taking steps to prevent retaliation against employees who complain of harassment, or who assist in conducting inquiries;

4. Protecting the confidentiality of employees who allege or report harassment, to the extent possible while permitting the agency to take immediate action;

5. Protecting the confidentiality of the accused, to the extent possible while taking immediate interim action and development of the facts;

6. Providing interim relief to alleged victims of harassment, pending the outcome of an inquiry to ensure that further misconduct does not occur;

7. Consulting with internal and external EEO officials; and

8. Attending anti-harassment training mandated by the agency.

C. The EEO Director and supporting anti-harassment points of contact listed in Appendix A are responsible for:
1. Ensuring that this policy is available and accessible to all Board employees;

2. Being available to receive complaints under this policy;

3. Advising supervisors on how to provide interim relief to individuals alleging subjection to harassing conduct. This will ensure that further misconduct does not occur pending the outcome of an inquiry;

4. Advising the Board Members and other agency employees who need to know of the allegations of harassment and the resolution of those allegations under this policy;

5. Providing technical assistance and support to ensure compliance with this policy; and

6. Providing anti-harassment training to supervisors.

V. Notification

A. Individuals are strongly encouraged to promptly report any incident of harassing conduct when the individual believes that he or she has been the victim of harassment. The Board can correct harassing conduct only if it is aware of the behavior. Employees should report harassing conduct to their supervisor or another supervisory official. Employees are not required to report allegations of harassment to their immediate supervisor when the supervisor is the alleged harasser.

B. Filing a harassment complaint pursuant to this policy does not affect rights under the EEO complaints process. The anti-harassment process is entirely separate and apart from the EEO complaints process. This means that an employee who reports allegations of harassment in accordance with this policy has not filed an EEO complaint. An employee who wishes to file a discrimination complaint should contact an EEO Counselor as specified in the PCLOB’s EEO policy. An employee may also pursue both avenues of redress simultaneously. Any employee who believes that he or she has been subjected to harassment must initiate contact with an EEO Counselor within 45 days of the alleged discriminatory action or, in the case of personnel actions, within 45 days of the effective date of the action.

VI. Whistleblower Activity

A. It is the policy of the Board to promote and maintain a work environment free from harassment or reprisal for any action taken by an individual to appropriately report waste, fraud, and abuse.

B. The Board also does not tolerate harassment or retaliation against employees who report violations of laws, rules, or regulations or report mismanagement, waste,
fraud, or abuse to the Office of Special Counsel or other individuals authorized to receive such disclosures.

C. The Board and its employees will not take or fail to take, threaten to take or fail to take, direct others to take, recommend, or approve any personnel action against an employee or applicant because of:

1. Disclosure of information, or lawful assistance to an individual disclosing information that is reasonably believed to evidence violations of—
   
   i. Law, rule or regulation; or
   
   ii. Gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

2. Unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs, retaliation against an employee or applicant for making a protected disclosure is prohibited.

Effective Date: Oct. 8, 2016
Certification:
APPENDIX A: Anti-Harassment Points of Contact (updated Feb. 7, 2019)

Lynn Parker Dupree, Deputy General Counsel

Melvin Lucas, Systems Administrator

TBD, Operations Director

APPENDIX B: References

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) et seq.


Equal Employment Opportunity Management Directive, MD 715, Model Agency Title VII and Rehabilitation Act Programs

Whistleblower Protection Act, 5 U.S.C. § 1201 et seq.
This memorandum provides further guidance regarding the PCLOB’s Anti-Harassment Policy, approved by the Board and certified by the General Counsel on Oct. 8, 2016, and follows agency engagement with the Equal Employment Opportunity Commission. The policy shall be interpreted and implemented with the following guidance:

- In Section III, protected bases includes pregnancy. 42 U.S.C. § 2000e(k).

- To expand upon Sections III.B and V.A, a PCLOB employee may file a complaint with any of the anti-harassment points of contact in Addendum A. This does not prohibit an employee from raising the issue or filing a complaint with PCLOB management or another PCLOB employee, if that is the preferred route for the employee. Once the PCLOB receives a complaint, the following shall occur:
  
  o The PCLOB shall begin an investigation within 10 days of receiving notice of a harassment allegation. Complainant v. Dep’t of Veterans Affairs, EEOC Appeal No. 0120123232 (May 21, 2015).

  o The PCLOB’s investigation must be prompt, thorough, and impartial. It will occur in three stages: (1) factual development, including reviewing documents and conducting interviews; (2) analysis of the factual record, with reference to applicable laws, regulations, and policies; and (3) determinations for any needed corrective action. At any time deemed necessary by the investigator, the PCLOB may provide interim relief that is appropriate to the discovered facts. The investigator must ensure the due process rights of all involved staff are considered and protected.

  o The investigator must objectively gather and consider relevant facts, as well as be well-trained in the skills required for interviewing witnesses and evaluating credibility. The alleged harasser shall not have supervisor authority over the investigator, nor have direct or indirect control over the investigation. If possible, the investigator will come from the PCLOB’s shared service provider or a third-party contract source. If not, the
General Counsel shall determine the appropriate internal investigator in accordance with applicable law and regulation, as well as best practices.

- With respect to Section IV.C, while the EEO Director may oversee the PCLOB’s anti-harassment program as a whole, anti-harassment investigations should be conducted as separately and independently as possible to ensure the independence of the investigation.

- The PCLOB shall reach a decision on corrective action within 60 days. Tammy S. v. Dept of Defense, EEOC Appeal No. 0120084003 (June 6, 2014). The PCLOB will take immediate and appropriate corrective action when it determines harassment has occurred.

- As needed, the PCLOB may issue supplemental guidance to assist with the implementation of this policy and guidance memorandum.