PRIVACY & CIVIL LIBERTIES OVERSIGHT BOARD

Equal Employment Opportunity Policy

Policy 2016-002

I. Scope

This policy establishes the Board’s policy and procedures regarding Equal Employment Opportunity (“EEO”) and alternative dispute resolution processes. This policy also describes the rights and responsibilities of staff and supervisors regarding EEO and unlawful harassment.

II. Definitions

A. Affirmative Employment Program: The Board’s multi-year plan to ensure that the Board provides equal employment opportunity with the goal of creating a diverse and representative workforce as required under Title VII of the Civil Rights Act and the Rehabilitation Act.

B. Alternative Dispute Resolution or ADR: Problem-solving techniques, such as mediation and facilitation, used to reach resolution of EEO and other workplace disputes without litigation.

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

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

E. Chairman: The Chairman of the Board.

F. Complainant: Individual who files an informal or formal EEO complaint.

G. Disability: A current physical or mental impairment that substantially limits one or more major life activities, or a record of a physical or mental impairment that substantially limits one or more major life activities. A person may be regarded as having a disability if the Board makes an employment decision about the person based on a real or perceived impairment.
H. Discrimination

1. Unfair treatment, including harassment, because of an individual's race, color, religion, national origin, sex (including pregnancy, sexual orientation, and gender identity), age, disability, genetic information, and retaliation for protected activity.

2. Making an employment decision, denying benefits and privileges of employment, or otherwise affecting an individual's terms and conditions of employment because of race, color, religion, national origin, sex (including pregnancy, sexual orientation, and gender identity), age, disability, genetic information, and retaliation for protected activity.

3. Reprisal for protected activity.

4. Denying a reasonable religious accommodation for religious beliefs, practices, or observances or to a qualified individual with a disability without showing undue hardship to the Board.

I. 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.

J. EEO Investigator: Individual who investigates formal complaints of discrimination. The EEO Investigator may be an individual outside of the agency, but the EEO Officer supervises the work to ensure complaints are investigated.


L. EEO Officer: Individual who manages the Board’s EEO programs, who may be employed inside or outside of the agency.

M. General Counsel: Individual appointed by the Chairman to act as the chief legal officer of the Board or, if the General Counsel is absent or unavailable, the Deputy General Counsel, or in the event that both positions are vacant, the individual(s) designated by the Chairman (or, in the event the Chairman position is vacant, by the Board) to discharge the responsibilities assigned to the General Counsel. If both the General Counsel and Deputy General Counsel are absent and unavailable for a prolonged period of time, the Chairman (or the Board in the event the Chairman position is vacant) may designate any Staff Member who is an active member of the bar of any state, territory, or the District of Columbia to temporarily discharge the responsibilities assigned to the General Counsel until the General Counsel or Deputy General Counsel is again available or a successor has been duly appointed.
N. **Genetic Information:** Information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members, such as an individual's family medical history.

O. **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.

P. **Protected Activity:** Action taken by an individual to engage in the EEO process, participate in the investigation of an informal or formal EEO complaint, or complain about what the individual reasonably believes is discrimination.

Q. **Reasonable Accommodation:** Change or modification to a job, how a job is performed, or to the work environment to enable a qualified individual with a disability to perform the essential job duties of the individual's position, absent undue hardship to the Board.

R. **Religious Accommodation:** Change or modification to a job or Board policy or procedure that is given to an individual staff member whose religious beliefs, practices, or observances conflict with a Board requirement, absent undue hardship to the Board.

S. **Reprisal:** An action that is taken against an individual who has engaged in the EEO process, participated in the investigation of an informal or formal EEO complaint, or complained about discrimination, and that is designed to punish or chill further participation in EEO activities or opposition to discrimination. An individual may bring a separate retaliation claim for actions designed to punish, or chill further participation in EEO activities or opposition to discrimination.

T. **Sex Discrimination:** Discrimination that is based on an individual's gender, sexual orientation, or gender identity. Discrimination on the basis of pregnancy is also a form of sex discrimination.

U. **Special Emphasis Programs:** Programs designed to eliminate barriers to equal employment for minorities, women, and persons with disabilities through ongoing education, outreach, and evaluation of existing programs and personnel practices.
V. **Staff or Staff Member:** For purposes of this policy, 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.

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

X. **Undue Hardship:** An undue hardship exists when an accommodation would impose a significant cost or burden on the Board's budget or activities such that the Board cannot be expected to grant that accommodation. Undue hardship may include interference with the function of the Board, or a significant detrimental change in the operation of the Board.

III. **Applicability**

This policy applies to all current and former Board staff. This policy also applies to job applicants and, in limited circumstances, contractors.

IV. **Policy**

A. **General:** The Board is committed to creating and sustaining a workplace where all staff are treated equitably and work in an environment that is free from discrimination based on race, color, religion, national origin, sex (including pregnancy, sexual orientation, and gender identity), age, disability, genetic information, and retaliation for opposing discrimination or participating in the investigation of an informal or formal EEO complaint.

B. The Board provides training towards full implementation of this policy.

C. **Harassment:** The Board does not tolerate harassment on any basis listed in Section IV.A. The Board will undertake a prompt investigation and apply appropriate corrective action to address harassment before the conduct rises to the level of unlawful harassment.

D. **Retaliation:** The Board does not tolerate harassment or reprisal based on an individual's participation in the EEO process or opposition to unlawful employment practices.

E. **Merit Principles:** The Board is committed to ensuring that discrimination is not the basis for any employment decision, including personnel practices, administrative actions, and management decisions. The Board will review its employment practices and policies on a regular basis and take steps to eliminate barriers to full equal employment opportunity for all staff.
F. Religious Accommodation: The Board provides religious accommodation for an individual staff member’s religious beliefs, practices, or observances unless doing so causes an undue hardship to the Board.

G. Persons with Disabilities: The Board is committed to being a model employer for individuals with disabilities, and ensuring that staff with disabilities enjoy all the benefits and privileges of employment equal to those enjoyed by Board staff without disabilities. The Board provides reasonable accommodation for individual staff members with disabilities, unless doing so causes an undue hardship to the Board. The Board will provide reasonable accommodation in a prompt, fair, and efficient manner to ensure that qualified individuals with disabilities are able to perform their assigned duties and enjoy the benefits and privileges of working at the Board.

H. Confidentiality of Medical Information: The Board is committed to protecting the confidentiality of medical information as required by the Rehabilitation Act and the Genetic Information Nondiscrimination Act. The Board will not seek family medical history. The Board will seek personal medical information from applicants and staff only in limited circumstances where necessary to comply with legal requirements. The Board will not disclose medical information received from applicants and staff except as permitted by law. The Board will maintain medical information in separate and secure files and will not co-mingle medical information with personnel files.

I. Diversity and Affirmative Employment: The Board is committed to promoting the diversity of its workforce at all levels and to sustaining an inclusive work environment to allow each individual to achieve and maintain excellence in performing their duties. The Board follows guidance from the Equal Employment Opportunity Commission to identify barriers to equal employment opportunity and to develop and implement plans to eliminate those barriers in ways that are consistent with federal law.

V. Responsibilities

A. Director: The Director is responsible for –

1. Delegating authority to the EEO Officer to manage the EEO programs.

2. Demonstrating commitment to principles of equal employment opportunity by regularly communicating support for the Board’s EEO programs.

B. EEO Officer: An internal or external employee responsible for managing the Board’s EEO programs; proposing and coordinating change to the Board’s EEO policies and procedures; administering the Board’s formal EEO complaint process in a fair and impartial manner; appointing, training, and supervising EEO Counselors; issuing final decisions and orders in EEO complaints; coordinating EEO training; managing the

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1 The Board has delegated the role of EEO Director to the Chairman of the Board. 6 C.F.R. § 1000.5(b)(8). In the event that the Chairman’s position is vacant, the authority returns to the Board, which may re-delegate the authority at its discretion.
Board’s alternative dispute resolution program for EEO matters; and developing and coordinating the Board’s affirmative employment, diversity, and inclusion activities.

C. EEO Counselor: An internal or external employee responsible for —

1. Performing EEO counseling for individuals who bring claims of employment discrimination with tact, neutrality, and respect for the people involved in the EEO dispute.

2. Completing mandatory annual training in accordance with EEOC regulations.

D. General Counsel and Deputy General Counsel: Responsible for ensuring that merit principles are followed in personnel actions; participating in the collection of workforce data related to race, gender, national origin, and disability status of staff and applicants; and cooperating in EEO investigations by retaining records and other information related to an EEO complaint.

E. Supervisors: Responsible for —

1. Proactively applying, promoting, and communicating principles of equal employment opportunity in personnel practices, administrative actions, and management decisions.

2. Responding promptly and seriously to observations or complaints of discrimination, and participating in efforts to resolve complaints at the lowest level.

3. Attending EEO training at least once every 2 years.

F. Board Staff: Responsible for —

1. Treating others equally, without regard to race, color, religion, national origin, sex, age, disability, genetic information, sexual orientation, or retaliation for protected activity.

2. Assisting in creating and sustaining a respectful environment free from unlawful conduct.

3. Participating in investigations or inquiries into allegations of discrimination.

4. Attending EEO training at least once every 2 years.

VI. Contractors

In limited circumstances, as determined by the EEO Officer, contractors may be considered staff regarding the applicability of this policy. If a contractor alleges discrimination, the
EEO Officer will determine if the individual is eligible to file a formal EEO complaint. If the individual is not eligible to file a formal EEO complaint, the Board may, within its discretion and on a case-by-case basis, agree to participate in alternative dispute resolution with the individual and may conduct a limited inquiry into the allegations.

VII. **Disability and Religious Accommodation**

An individual staff member who needs an accommodation due to a disability or religious accommodation because a work requirement conflicts with the individual staff member’s religious beliefs, practices, or observances must notify a supervisor in the individual staff member’s chain of command about the conflict and the need for accommodation. The Board will strive to provide the accommodation unless it causes undue hardship on the operations of the Board or conflicts with the rights of other staff. Staff and supervisors who have questions about disability and religious accommodations should contact the EEO Officer or the General Counsel for additional guidance.

VIII. **Special Emphasis Programs**

The EEO Officer may sponsor activities throughout the year to celebrate the accomplishments of different segments of society through the special emphasis programs. Staff is encouraged to attend and participate in these activities. Supervisors are expected to permit staff to attend and participate in these events whenever possible. The special emphasis programs allow staff to learn about the achievements and abilities of different groups with the goal of eliminating barriers to equal employment opportunity for all staff.

Effective Date: **Oct. 8, 2016**

Certification: [Signature]
APPENDIX A: References

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


29 C.F.R Part 1614, Federal Sector Equal Employment Opportunity


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

5 U.S.C. § 2302
Addendum to Section III on page 4 (insert new second sentence in paragraph):

EEO concerns all personnel, employment programs, management practices and decisions, including but not limited to recruiting, hiring, and promotions.