



**PRIVACY & CIVIL LIBERTIES OVERSIGHT BOARD**

**Equal Employment Opportunity Policy  
Policy 401-01**

**March 4, 2023**

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**Section 1. Summary of Changes**

- I. This document is a major revision to PCLOB Policy 2016-002, Equal Employment Opportunity Policy, dated October 8, 2016. Adoption, Revision, and Rescission of Internal Agency Policies and Procedures, dated October 26, 2015.

**Section 2. Purpose**

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

**Section 3. Applicability**

- I. This policy applies to all current and former Board staff. EEO concerns all personnel, employment programs, management practices and decisions, including but not limited to recruiting, hiring, and promotions. This policy also applies to job applicants.
- II. This policy shall be effective on the date above, and shall not be retroactive
- III. This document is an internal agency procedure. Nothing herein creates any legal or enforceable rights, benefits, obligations, or liabilities, whether substantive or procedural, for any parties over and above those that already exist in applicable law.
- IV. A majority of the Board may waive, change, or grant exceptions to this policy, consistent with controlling law and regulations.

**Section 4. Definitions**

All definitions contained in 42 U.S.C. §§ 2000ee, et seq, 6 C.F.R. §§ 1000, et seq, and PCLOB Policy 201-01 are hereby incorporated unless otherwise specified.

- I. *Alternative Dispute Resolution or ADR* means problem-solving techniques, such as mediation and facilitation, used to reach resolution of EEO and other workplace disputes without litigation.
- II. *Complainant* means an individual who files an informal or formal EEO complaint.
- III. *Disability* means 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.
- IV. *Discrimination* means:
  - A. 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;
  - B. 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;
  - C. 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.
- V. *EEO Counselor* means an individual, inside or outside of the Board, designated by the EEO Director or Shared Service Provider, who, serving as a neutral party, provides a complainant with his/her rights and obligations under EEO laws, gathers limited data, and will attempt informal resolution of the matter via either counseling or mediation.
- VI. *EEO Investigator* means an individual who investigates formal complaints of discrimination. Operates under the supervision of the EEO Director and Shared Service Provider.
- VII. *EEO Director* means the formally designated individual who manages the PCLOB's EEO programs, who may be employed inside or outside of the agency.
- VIII. *Genetic Information* means 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.

- IX. *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.
- X. *Religious Accommodation*: Change or modification to a job or Board policy or procedure that is given to a staff member whose religious beliefs, practices, or observances conflict with a Board requirement, absent undue hardship to the Board.
- XI. *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.
- XII. *Special Emphasis Programs*: Programs designed to eliminate barriers to equal employment for members of protected classes including but not limited to women and minorities through ongoing education, outreach, and evaluation of existing programs and personnel practices.
- XIII. *Staff Member*: For purposes of this policy, the term encompasses all current and former Board Members and Staff Members.
- XIV. *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.

## **Section 5. Objectives**

It is the Board's objectives to:

- I. Foster a culture of inclusion and respect, and provide equal opportunity in employment for all employees and applicants.
- II. Create and sustain a workplace where all staff are treated with respect and work in an environment that is free from unlawful discrimination, or reprisal for prior participation in EEO or other protected processes.
- III. Identify and eliminate systemic or institutional barriers and practices to employment, both physical and nonphysical, that impede equitable engagement for all employees and applicants. The Board is committed to promoting the diversity of its workforce across grade levels, teams and roles. Furthermore, the Board will ensure an inclusive work environment to allow each individual to achieve and maintain excellence in performing their duties.
- IV. Ensure that discrimination is not the basis for any employment decision, including but not limited to personnel practices, administrative actions, and management decisions. As such, the Board endeavors to review its employment practices, environment and policies on a regular basis and take steps to eliminate barriers to full equal employment opportunity for all staff members.

- V. Strive to achieve the elements of a model EEO program as described in EEO Commission (EEOC) Management Directive 715.
- VI. Develop, implement, and monitor an EEO counseling, complaints, and investigations program in accordance with laws, rules, regulations, policies, and procedures that prohibit discrimination and to provide for the prompt, equitable adjudication of complaints filed by individuals or classes.

## **Section 6. Policy**

### **I. Board Expectations.**

- A. The Board is committed to being a model employer for all individuals, including members of protected classes, and ensuring that staff with disabilities enjoy all the benefits and privileges of employment equal to those enjoyed by Board staff without disabilities.
- B. Unlawful discrimination in any form will not be tolerated.
- C. Employees will not be punished for reporting discrimination, participating in a discrimination investigation, or opposing discrimination.
- D. The Board seeks to address improper conduct at the earliest possible stage, before it becomes severe or pervasive.
- E. The Board is committed to protecting the confidentiality of medical information as required by the Rehabilitation Act and the Genetic Information Nondiscrimination Act.
  - 1. The Board will not seek family medical history.
  - 2. The Board will seek personal medical information from applicants and staff only in limited circumstances where necessary to comply with legal requirements, or protect Staff Members.
  - 3. The Board will not disclose medical information received from applicants and staff except as permitted by law.
  - 4. The Board will maintain medical information in separate and secure files and will not co-mingle medical information with personnel files.

II. Guidance.

- A. The Board shall strive to follow guidance from the EEOC 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.
- B. The EEO Director shall ensure that a complaint procedure exists that includes confidential counseling, mediation, and investigation. Where it is established that discrimination occurred, supervisors are expected to take prompt corrective action, including disciplinary action.
- C. A 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 supervisory chain about the conflict and the need for accommodation.
  - 1. The Board will strive to provide the accommodation unless it causes undue hardship on the operations of the PCLOB.
  - 2. Staff and supervisors who have questions about disability and religious accommodations should contact the EEO Director or the General Counsel for additional guidance.

III. Cooperation.

- A. Staff who have knowledge of the circumstance(s) or incident(s) causing an employee to file an EEO complaint shall cooperate during all stages of the complaint process. This cooperation includes assisting counselors, mediators, and investigators.
- B. If a complainant fails to cooperate during the complaint process, his or her complaint may be dismissed.
- C. Other parties, including responsible management officials and witnesses, who do not cooperate may be disciplined for failing to assist in EEO proceedings.

IV. Special Emphasis. The EEO Director may sponsor activities throughout the year to celebrate the accomplishments of different segments of society through the special emphasis programs.

- A. 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.
- B. Staff is encouraged to attend and participate in these activities. Supervisors and other Agency leadership are expected to attend and encourage staff to attend and participate in these events whenever possible.

## **Section 7. Responsibilities**

- I. EEO Director. The EEO Director is responsible for:
  - A. Issuing guidance for the processing of EEO complaints.
  - B. Demonstrating commitment to principles of equal employment opportunity by regularly communicating support for the PCLOB's EEO programs, as well as ensuring interactions with employees foster an inclusive and equitable environment.
  - C. Managing the PCLOB's EEO programs, policies, and procedures, and promulgating guidance as appropriate, such as the inclusion of critical elements in performance appraisals for supervisors;
  - D. Administering the Board's EEO complaint process, including coordination through shared service providers, and ensures timely, fair, and impartial consideration, investigation, and disposition of complaints of discrimination;
  - E. Issuing final decisions and orders in EEO complaints;
  - F. Ensuring PCLOB employees have access to EEO counselors;
  - G. Appointing, training, and supervising EEO Counselors, including through a Shared Service Provider;
  - H. Coordinating EEO training for all Board Members and staff;
  - I. Managing the Board's ADR program for EEO matters;
  - J. Working with the Diversity, Equity, Inclusion, and Accessibility Committee on affirmative employment, diversity, and inclusion activities; and,
  - K. Representing the PCLOB on non-defensive EEO matters with EEOC, and other Federal Agencies.
  - L. Ensuring the complaint process avoids conflicts of interest. Such personnel must comply with Management Directive 110 for processing discrimination complaints.
- II. EEO Counselor. The EEO Counselor is responsible for:
  - A. Performing EEO counseling for individuals (complainants) who bring claims of employment discrimination with tact, neutrality, respect and wherever possible privacy for the people involved in the EEO dispute.
  - B. Completing mandatory annual training in accordance with EEOC regulations.
- III. Supervisors. Supervisors are responsible for:

- A. Proactively applying, promoting, and communicating principles of EEO in personnel practices, administrative actions, and management decisions.
  - B. Responding promptly and seriously to observations or complaints of discrimination.
  - C. Reporting incidents of discrimination or harassment.
  - D. Participating in efforts to resolve complaints at the lowest level.
  - E. Engaging with respect and fostering an environment for all employees that is equitable.
  - F. Ensuring privacy and anonymity to the greatest degree possible in all complaints or similar interactions with any employee. Supervisors are still expected to refer incidents of harassment to the Office of the General Counsel.
  - G. Attending EEO training at least once every two years.
- IV. Staff Members. All Staff Members are responsible for:
- A. Ensuring PCLOB is free from discrimination on the basis of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age, disability, or genetic information (including family medical history).
  - B. Engaging respectfully with all persons and striving to create an equitable environment that is free from unlawful conduct.
  - C. Participating in investigations or inquiries into allegations of discrimination.
  - D. Attending EEO related training at least once every two years.

### **Section 8. Contractors**

- I. In limited circumstances, as determined by the EEO Director, contractors may be considered Staff regarding the applicability of this policy.
- II. If a contractor alleges discrimination, the EEO Director will determine if the individual is eligible to file a formal EEO complaint consistent with federal law.
- III. If the EEO Director determines the contractor is not eligible to file a formal EEO complaint, by a majority vote, 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. The Board may also refer the contractor to the contract-holding entity, when appropriate.

### **Section 9. Conflicts of Interest**

- I. The individual representing the PCLOB in EEO matters before the EEOC or MSPB shall not be the same person who provides legal advice to the EEO Director on such matters.



## **Appendix A**

### **References**

- I. Prohibited Personnel Practices, 5 U.S.C. § 2302
- II. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) et seq.
- III. Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 633(a).
- IV. Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791.
- V. Genetic Information Nondiscrimination Act of 2008, 29 U.S.C. § 2000ff.
- VI. 29 C.F.R Part 1614, Federal Sector Equal Employment Opportunity.
- VII. EEOC, Management Directive (MD) 110, “Federal Sector Complaints Processing Manual,” August 5, 2015.
- VIII. EEOC, MD 715, “Federal Responsibilities under Section 717 of Title VII and Section 501 of the Rehabilitation Act,” October 1, 2003.

**Appendix B**  
**EEO Process Q&A**

**Procedures - EEO Complaints**

**A. *Whom do I contact if I believe that I have been discriminated against?***

You may contact an EEO Counselor regarding incidents of alleged discrimination. EEO counseling is required prior to filing a formal EEO complaint.

An EEO Counselor may be contacted [eeo@gsa.gov](mailto:eeo@gsa.gov) or 202-501 -4571. You may also contact the EEO Officer at [kellyann.williams@gsa.gov](mailto:kellyann.williams@gsa.gov) or 215-284-7341. Employees should identify themselves as employees of a board or commission, and the PCLOB.

**B. *When should I start the EEO process?***

You must start the EEO process within 45 calendar days of the incident of alleged discrimination. You may start the informal stage of the process by contacting an EEO Counselor or the EEO Officer.

You may also ask the EEO Officer or EEO Counselor questions about the process.

**C. *Do I have a choice of EEO Counselors?***

No. EEO Counselors are assigned based on availability and to avoid conflicts of interest for the complainant and the EEO Counselor.

**D. *How confidential is the EEO process?***

EEO counseling is confidential and complainants may ask to remain anonymous during EEO counseling. Once a formal complaint is filed, information about you and your complaint will be disclosed during the investigation.

**E. *What happens during EEO counseling?***

An EEO Counselor provides information to you about how the federal-sector EEO process works, including timeframes and appeal procedures. The Counselor conducts a limited inquiry into your dispute and attempts an informal resolution by facilitating communication between you and the other individuals involved in the complaint. The individual(s) involved in the complaint have the right to know they have been implicated in alleged discrimination, but the employee alleging discrimination has the right to remain anonymous during the counseling stage. The Counselor also explains the Board's alternative dispute resolution ("ADR") program and the benefits of ADR for resolving EEO problems.

**F. *What happens if my EEO issue is not resolved?***

If your EEO issue is not resolved at the informal stage, you may file a formal complaint within 15 calendar days of receipt of notice issued by the EEO Counselor of your right to file a formal complaint. You must sign and date the formal complaint and submit it to the Board's EEO Officer. If the EEO Officer accepts your complaint for investigation, the Board generally has 180 calendar days to complete the investigation. If the EEO Officer dismisses your complaint in whole or in part, the EEO Officer will notify you of your right to appeal the decision dismissing your complaint.

**G. *What happens during an investigation?***

The investigative process is non-adversarial. That means that the EEO Investigator is obligated to collect evidence regardless of the parties' positions with respect to the items of evidence. An EEO Investigator interviews you and other witnesses, including supervisory officials, to collect testimony about your complaint. The Investigator prepares affidavits for you and other witnesses. The Investigator also collects relevant documents and information and prepares a report of investigation.

When the investigation is completed, the EEO Officer will send you a copy of the report. The agency representative will also receive a copy of the report on behalf of the accused. Within 30 calendar days from receipt of the report, you must choose between requesting a hearing before an administrative judge at the EEOC or a final decision from the EEO Officer. If you do not make a selection, the EEO Officer will issue a decision within 60 calendar days. More information about the hearing process and your rights after a decision is issued is available from the EEO Officer and [www.eeoc.gov](http://www.eeoc.gov).

**H. *What are the rights of the alleged discriminating employee?***

The person against whom allegations of harassment are made shall be treated like any other witness, consistently and fairly, and shall have access to information to respond to allegations and give evidence. The agency shall determine what information may be released in accordance with the Privacy Act. The person against whom allegations are made has the right to have the claims investigated by an independent and impartial factfinder that considers the evidence and witness testimony provided by both parties. The person against whom allegations have been made also will be provided a copy of the investigation report by the agency representative at the completion of the investigation.

**I. *What if something else happens to me while my complaint is pending?***

You may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims that are like or related to those raised in the original complaint. After you request a hearing, you may file a motion with the administrative judge and ask to amend your complaint.

**J. *How much time may I spend on EEO matters?***

You are entitled to a reasonable amount of official time during duty hours to present your complaint and to respond to Board requests for information. Witnesses who are federal employees are in duty status when their presence is authorized or required in connection

with the complaint. The amount of time that is reasonable depends on the stage and the particular circumstances of the complaint. You and your supervisor should agree how much official time you will be allowed to spend on EEO matters. If your supervisor denies your request for official time for EEO matters, your supervisor must put the denial in writing and send a copy to the EEO Officer where the denial will become part of your complaint file.

**K. *How much time may the accused spend on EEO matters?***

The accused is entitled to a reasonable amount of official time during duty hours to respond to Board requests for information. If the individual accused in an EEO complaint is a federal employee, he or she will be in duty status when their presence is authorized or required in connection with the complaint. The amount of time that is reasonable depends on the stage and the particular circumstances of the complaint.

**L. *Do I need a lawyer to file a formal EEO complaint?***

No. At any stage of the process, you are entitled to be represented by whomever you wish. Your representative does not have to be a lawyer. If the representative whom you choose is a Board employee, that person may not represent you if doing so would be a conflict of interest with his or her official duties. If your representative is a Board employee, that person is entitled to a reasonable amount of official time to represent you. The Board is not obligated to change work schedules, incur overtime costs, or pay any expenses to facilitate your choosing a representative or to allow you and your representative to confer.

**M. *What happens if my EEO issue is settled?***

If you and the Board settle your EEO issue, the parties will execute a written agreement that summarizes the settlement terms and spells out the obligations of the parties. The agreement is a legal and binding contract between the parties.

**N. *When can I file a lawsuit in court?***

EEOC regulations provide that you may file a civil lawsuit in U.S. District Court at the following stages:

1. Within 90 calendar days after receiving the final action where no administrative appeal has been filed;
2. After 180 calendar days from the date of filing a complaint if an administrative appeal has not been filed and final action has not been taken;
3. Within 90 calendar days after receiving the EEOC's final decision on an appeal;  
or,
4. After 180 calendar days from the filing of an appeal with EEOC if there has been no final decision by the EEOC.

***O. May I pursue my complaint in court and through the Board's EEO process?***

No. Court and the EEO process are exclusive. You may not begin the Board's EEO process after filing a lawsuit on the same issue. Also, filing a lawsuit after you have begun the Board's EEO process terminates the Board's EEO process.

**Procedures - Alternative Dispute Resolution**

***A. Background***

The Board encourages all staff to participate in efforts to resolve workplace disputes through the ADR program. ADR is available at every stage of the EEO process. At the initial counseling session, the EEO Counselor will explain how and when you and the other party may participate in ADR. If the matter is not resolved in ADR within 90 calendar days, you will be issued a notice of right to file a formal EEO complaint.

***B. What is mediation?***

Mediation is a process in which a neutral third party, a mediator, helps you and the other persons involved in your EEO dispute find a solution that is acceptable to both parties. Mediation is an alternative to a formal complaint and litigation. Mediation is voluntary and no one can force the parties to enter mediation or to reach an agreement. Mediation differs from other methods of dispute resolution and is focused on finding a mutually acceptable solution to a problem or dispute as quickly as possible. Mediation allows you to talk in a confidential setting to find out whether you and the other party can resolve your problem without the time and expense of litigation. You retain control and may agree only to those things that you believe are in your best interest.

***C. Who are the mediators?***

Mediators are individuals from outside the Board with training and skills in communication and solving problems. Mediators do not judge, assign blame, or impose solutions. Mediators are not investigators, fact-finders, or judges. Mediators create a safe, noncombative, confidential forum for you and the individuals involved in your dispute to discuss your conflict openly and to find ways to resolve it.

***D. What happens in mediation?***

First, the mediator will explain the mediation process and answer your questions. Each party in the EEO dispute will have a chance to tell their side of the story. The mediator helps the parties identify and prioritize shared concerns and find lasting solutions. As a final step, the mediator helps the parties to draft a written agreement. You control what happens in mediation. You make your own decisions about what is best. The mediator does not impose personal views or solutions.

***E. Do I need an attorney or other representative?***

No. Representation is not necessary for mediation. You may bring to the mediation an attorney, or another representative who meets EEO requirements regarding conflicts of interest.

***F. Will mediation prevent me from pursuing my EEO claim under the Board's EEO process or in court?***

If you settle your EEO claim in mediation, you cannot pursue your EEO claim under the EEO process or in court. If you do not settle your EEO claim in mediation, you may resume the EEO process at the point where it stopped for mediation.