

## **ANTI-HARASSMENT PROGRAM**

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### **I. Purpose**

This Instruction implements the Department of Homeland Security (DHS) Directive 256-01, setting forth the Department's Anti-Harassment Procedures, and establishes the requirements for preventing workplace harassment, and for addressing and resolving allegations of harassment, within the Department's civilian workforce.

### **II. Scope**

- A. This Instruction applies to allegations or reports of harassment of or by civilian employees throughout DHS pursuant to DHS Directive 256-01.
- B. This Instruction is separate and apart from any collective bargaining agreement or statutory complaint process covering harassment.

### **III. References**

- A. Equal Employment Opportunity Commission's Management Directive 110, (MD-110) "Federal responsibilities under Section 717 of Title VII and Section 501 of the Rehabilitation Act" (October 1, 2003)
- B. Equal Employment Opportunity Commission, "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors," No. 915.002 (June 18, 1999)
- C. DHS Policy Statement 256-06, "Anti-Harassment Policy Statement"
- D. DHS Directive 256-01, "Anti-Harassment Program"
- E. DHS Instruction 250-09-001, "Discipline and Adverse Actions Program"

## IV. Definitions

- A. **Decision-Maker**: A supervisor or other management official senior to the individuals accused of harassment, designated by senior management to address a particular allegation of harassment, who 1) implements appropriate interim measures if warranted, and 2) after reading the fact-finding report, may take corrective action, as appropriate.
- B. **Fact-Finder**: A neutral third party responsible for investigating and recording testimonial and documentary evidence concerning an allegation of harassment. An employee of the Component from which a harassment allegation arises may serve as fact-finder with respect to that allegation as long as the employee's participation does not pose a conflict of interest.
- C. **Fact-Finding**: An inquiry into the testimonial and documentary evidence concerning an allegation of harassment, conducted by a neutral third party.
- D. **Fact-Finding Report**: A narrative detailing the testimonial and documentary evidence concerning an allegation of harassment, along with copies of any documentary evidence collected during the fact-finding.

## V. Responsibilities

- A. The **Officer for Civil Rights and Civil Liberties (CRCL)** develops and implements the DHS procedures and requirements in this Instruction. The Officer also develops and implements procedures for Components for reporting harassment, responding to reports of harassment, and conducting inquiries into reports of harassment. The Officer also identifies, and oversees, a Departmental Anti-Harassment Program Manager or Coordinator, who shall also serve as the Headquarters Anti-Harassment Program Manager or Coordinator.
- B. The **DHS Chief Human Capital Officer** coordinates with the CRCL Officer regarding personnel matters affected by this Instruction.
- C. **Component Human Capital Officers** advise Component Heads, supervisors and managers with respect to their responsibilities in: 1) responding to reports of harassment; and 2) working to prevent harassment in the workplace. At a Component whose Human Capital Officer is not involved in addressing employee misconduct, this responsibility lies with the designated management official who is responsible for doing so.

D. **Component Heads** coordinate with the CRCL Officer to develop Component-specific procedures for reporting harassment, responding to reports of harassment, and training all Component employees (including specific training for supervisors and fact-finders), in accordance with the DHS Anti-Harassment Policy Statement, DHS Directive 256-01, and this Instruction. Component Heads also identify a Component Anti-Harassment Program Manager or Coordinator.

E. The **Component Anti-Harassment Program Manager or Coordinator** ensures compliance with the Component's Anti-Harassment Program and Reporting Procedures, consistent with the requirements of the DHS Anti-Harassment Policy Statement, DHS Directive 256-01, and this Instruction by: 1) ensuring timely fact-findings; 2) ensuring allegations and instances of harassment are entered into the Departmental reporting mechanism(s); 3) ensuring distribution of the DHS Anti-Harassment Policy Statement and Component Reporting Procedures, and 4) ensuring appropriate Component anti-harassment training.

## VI. Content

A. Per DHS Directive 256-01, the Department works to maintain a work environment free from all forms of harassment, as defined in the Directive.

1. This Instruction prohibits harassing conduct by any DHS employee, or harassment of any DHS employee by any employees, contractors, vendors, applicants and other individuals with whom DHS employees come into contact by virtue of their work for DHS. This Instruction covers and prohibits harassing conduct having a direct nexus to the individual's position or responsibilities, which occurs on duty, off duty, face-to-face, or remotely via electronic/digital means, including, but not limited to telephone, email, social media, websites and chat applications. Such conduct is prohibited regardless of whether it occurs during working hours or on DHS property.

2. Examples of the types of unwelcome conduct on a protected basis prohibited by this Instruction include, but are not limited to epithets, slurs, stereotyping, ridicule, mockery or put downs, intimidating acts, bullying, acts of violence, actual or implied threats of violence, and the circulation or posting of written or graphic materials that show hostility toward individuals because of a protected basis. Unwelcome or harassing conduct also includes any intentional acts of intolerance committed against a person, a group of individuals, or property motivated, in whole or in part, by an individual's bias against characteristics that are considered a protected basis as defined in DHS Directive 256-01, and which are intended to, or are more likely than not to, have the effect of intimidating others or inciting others to similar conduct. Further examples of prohibited conduct include the display, presentation, creation or depiction --

irrespective of size, type, or manner of display -- of symbols, photographs, images, or other printed or electronic material that would reasonably be construed to encourage oppression or hatred (e.g., a noose, swastika, or any other symbol widely identified with oppression or hatred).

3. Sexual harassment is a form of harassment prohibited by the DHS Anti-Harassment Policy Statement, DHS Directive 256-01, and this Instruction. Sexual harassment involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

a. Submission to or rejection of such conduct is made explicitly or implicitly a term or condition of one's employment or is used as a basis for career or employment decisions affecting that person; or

b. Such conduct interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

4. Although a single harassing utterance or act ("conduct") may not rise to a level of unlawful harassment, it still has no place at DHS. Accordingly, the scope of conduct prohibited under this Instruction, including such single acts, is broader than the scope of conduct made illegal under anti-discrimination statutes identified in DHS Directive 256-01.

B. All harassing conduct, as described in DHS Directive 256-01, and amplified above, is a violation of this Instruction. Employees are subject to discipline, up to and including removal, for harassing conduct in violation of this Instruction. This Instruction also prohibits retaliation against an employee for reporting harassment or assisting another individual in reporting harassment, participating in an inquiry into a report of harassment, participating in the EEO complaint process, or opposing discrimination or harassment. Managers and supervisors who knowingly tolerate or ignore harassment or retaliation, including managers or supervisors who fail to immediately report such misconduct, are in violation of the DHS Anti-Harassment Policy Statement and subject to discipline.

**C. Component Anti-Harassment Program Requirements:**

1. **General Guidelines.** As long as a Component Anti-Harassment Program otherwise comports with the provisions of this Instruction, Components may place their Anti-Harassment Program within existing investigative bodies. CRCL develops procedures for Support Components for filing, addressing, and conducting inquiries into reports of harassment.

2. **Supplemental Anti-Harassment Policies.** Components that wish to establish a supplementary anti-harassment policy may do so, provided that the policy is consistent with the DHS Anti-Harassment Policy Statement, DHS Directive 256-01, and this Instruction, and as long as the Component seeks, and receives, the written approval of the CRCL Deputy Officer for EEO and Diversity.

3. **Component Anti-Harassment Programs Reporting Procedures.** Each Component shall have a written description of its Anti-Harassment Program, and the procedures for filing, addressing, and conducting inquiries into reports of harassment. The procedures shall identify the multiple avenues through which individuals may report suspected violations of the DHS Anti-Harassment Policy Statement, DHS Directive 256-01, or this Instruction. The description should identify the following reporting avenues at a minimum: the Component Anti-Harassment Program, the employee's supervisor, and other senior management officials. A sample reporting procedures notice is attached as [Appendix A](#).

4. **Publicizing the DHS Anti-Harassment Policy Statement and Component Reporting Procedures.** The Component Anti-Harassment Manager or Coordinator (CRCL for Headquarters):

a. Ensures that the DHS Anti-Harassment Policy Statement and Component Reporting Procedures are posted/appear in conspicuous locations on the Component's intranet or, for employees who do not have access to the intranet, in a physical location accessible by those employees.

b. Provides a copy of the DHS Anti-Harassment Policy Statement and Component Reporting Procedures to new employees as part of orientation. New employees should sign an acknowledgement that they have been provided the DHS Anti-Harassment Policy Statement and Component Reporting Procedures. The Component should note provision of the DHS Anti-Harassment Policy Statement to any employee unwilling or unable to sign acknowledgement.

c. Distributes to all Component employees the DHS Anti-Harassment Policy Statement and Component Reporting Procedures at least once per year.

d. Ensures that each employee takes mandatory anti-harassment training annually and that management tracks and reports compliance of all employees in the Component. Also ensures that supervisors and managers undergo additional training on their responsibilities in responding to allegations of harassment. Also ensures that fact-finders undergo additional training on how to address their responsibilities. All training must comply with CRCL requirements. Proof of completion of all mandatory training is maintained by the Component.

5. **Reporting of Harassment Allegations:**

a. Anti-Harassment Program Managers or Coordinators ensure that all employees are aware of the procedures available to them to report allegations of harassment, and ensure all allegations are promptly entered into the Departmental reporting mechanism(s).

b. Employees who believe they have been subjected to, or have witnessed, harassing or retaliatory conduct shall promptly report the conduct consistent with Component Reporting Procedures.

c. Supervisors and management officials who receive reports of harassment must forward those allegations to the Component Anti-Harassment Program Manager or Coordinator consistent with the Component's Reporting Procedures.

6. **Interim Remedial Measures:**

a. Upon receipt of a report of possible harassment, the Anti-Harassment Program Manager or Coordinator informs management officials senior to the individual(s) accused of harassment, and the servicing human resources office or other appropriate office, so that, where appropriate, managers and/or decision-makers may swiftly take interim remedial measures to ensure that potentially harassing or retaliatory conduct does not occur while the inquiry into the allegations is conducted.

b. Before taking interim remedial measures, or making a decision not to take interim remedial measures, managers and/or decision-makers shall consult with their servicing Employee Relations office, or other appropriate office, and the Office of General Counsel or Component legal office.

**7. Standard Process for Conducting Inquiries into Reports of Harassment:**

a. Components determine the process for conducting inquiries into reports of harassment. As long as the program otherwise comports with the provisions of DHS Directive 256-01 and this Instruction, Components may house their Anti-Harassment Program within existing investigative bodies.

b. Reports of harassment are addressed through a prompt, thorough, and impartial fact-finding, conducted by a fact-finder trained, in accordance with subsection (7)(d) below, in conducting inquiries into harassment allegations. Reports (including the identity of the person making the report) are kept confidential to the extent possible, consistent with a thorough and impartial fact-finding.

c. In some instances, it may be difficult to know whether harassing conduct is occurring because of a protected basis. When receiving reports of harassment under DHS Directive 256-01 and this Instruction, Anti-Harassment Program Manager or Coordinator will construe those reports broadly, and conduct appropriate inquiries to develop facts relevant to whether the conduct at issue is related to a protected basis.

d. Fact-finders assigned to conduct inquiries must have received CRCL-approved training in interviewing and other investigative techniques, report writing, and conducting inquiries into harassment allegations, including instruction on what constitutes prohibited harassment pursuant to the provisions of DHS Directive 256-01 and this Instruction.

e. Inquiries are conducted as expeditiously as possible, such that a determination as to whether any corrective action is needed can be made, and such action effectuated as quickly as possible. The inquiry should begin promptly, usually within one week of the Anti-Harassment Program's receipt of the allegation.

f. The fact-finder develops a thorough, impartial record, containing sufficient information upon which a decision-maker can reasonably determine whether corrective action is appropriate. At a minimum, the fact-finder should interview the individual who is alleged to have been harassed, the individual who is alleged to have engaged in the harassing conduct, and any witnesses with relevant information about the allegation. In addition, the fact-finder should collect any relevant documentary evidence. After gathering all relevant evidence, the fact-finder develops a fact-finding report.

g. The fact-finding report contains sufficient information upon which a decision-maker can reasonably determine whether harassment occurred. If a report requires more than 30 pages, the report shall contain a summary from the fact-finder describing all of the evidence contained in the report, including any witness statements and other documentary evidence, along with copies of the statements and other evidence.

h. Copies of final fact-finding reports are submitted to the decision-maker, the head of the supervisory unit where the allegation originated, and the servicing Employee Relations office (or other office designated by the Component Head).

8. **Alternative Process for Conducting Inquiries into Certain Less Egregious Reports of Harassment:**

a. After conducting and documenting an initial review of a report of possible harassment, the Anti-Harassment Program Manager or Coordinator may, in appropriate circumstances, refer the report for a simplified inquiry. Appropriate circumstances exist when the harassing conduct alleged is not severe or pervasive, and the number of witnesses involved is low.

b. Simplified inquiries may be conducted by fact-finders or by management officials designated by the Anti-Harassment Program Manager or Coordinator, who must ensure that management officials who have not received CRCL-approved training in conducting fact-finding inquiries into anti-harassment allegations receive at a minimum, in writing, appropriate guidance in conducting a simplified inquiry.

c. Simplified inquiries generally follow the same process as standard inquiries, except that the format of the fact-finding report need not be as formal as a report for a standard inquiry.

9. **Post-inquiry Action by the Decision-Maker:**

a. Decision-makers promptly review fact-finding reports to determine whether conduct in violation of the DHS Anti-Harassment Policy Statement, DHS Directive 256-01, or this Instruction occurred and whether corrective action is appropriate. In cases where a decision-maker concludes that a violation of the DHS Anti-Harassment Policy Statement has occurred, the decision-makers consults with his or her servicing Employee Relations office (or other office designated by the Component Head) and servicing legal office to determine and undertake appropriate corrective action.

(1) Appropriate corrective action is proportionate to the severity of the harassment that occurred and is designed to ensure that the harassment does not re-occur.

(2) Action that is adverse or burdensome to a victim of harassment is not appropriate, corrective action.

b. Within 10 business days of making these determinations, decision-makers notify the individual who was alleged to have been harassed whether corrective action was, will be, or will not be taken. Decision-makers do not inform the individual as to the specific nature of any adverse employment action taken (e.g., reprimand, suspension, removal, etc.) For tracking purposes, decision-makers inform the Anti-Harassment Program Manager or Coordinator of all corrective actions taken, and provide the Anti-Harassment Program Manager or Coordinator with a brief explanation of any decision not to take corrective action.

c. Fact-finding reports may reveal misconduct, including rude or disruptive behavior that does not constitute harassment in violation of the DHS Anti-Harassment Policy Statement. If decision-makers determine that such misconduct occurred, they should consider whether disciplinary action is appropriate.

10. **Post-Decision Follow-up:**

a. In cases where the decision-maker determines that corrective action was necessary, the Anti-Harassment Program Manager or Coordinator follows up with the individual who was harassed within 90 days of that decision.

- b. At a minimum, the follow-up consists of ensuring that harassing conduct has not recurred.
- c. If the individual raises new allegations of harassment or retaliation, the Anti-Harassment Program Manager or Coordinator processes the new allegations as set forth in the provisions above.

11. **Avoiding Conflicts of Interest:**

- a. Because the Anti-Harassment Program Manager or Coordinator and the officials responsible for supporting and supervising the functioning of the Anti-Harassment Program Manager or Coordinator are responsible for the management functions of publishing Anti-Harassment Procedures and conducting fact findings regarding harassment reports, they may not also be responsible for managing, advising, or overseeing the EEO-pre-complaint or complaint process.
- b. Component Anti-Harassment Programs must avoid conflicts of interest in arranging for and/or conducting inquiries into reports of harassment.

A conflict of interest exists where the individual alleged to have engaged in the harassing conduct oversees the Component Anti-Harassment Program or is a senior management official with indirect oversight of the Component Anti-Harassment Program. The Component Anti-Harassment Program Manager or Coordinator considers, in other situations, whether a conflict of interest exists, such that the Component Anti-Harassment Program could not reasonably be expected to conduct an impartial inquiry.

- c. Components shall refer allegations that pose a conflict of interest to CRCL for assignment to another Component Anti-Harassment Program for purposes of conducting the fact-finding inquiry. After the inquiry is conducted, the fact-finding report is returned to the originating Component for action pursuant to the provisions outlined above, unless the individual alleged to have engaged in the harassing conduct is the Component Head. In such cases, CRCL consults with the Office of the General Counsel to identify an appropriate decision-maker.

12. **Reporting:**

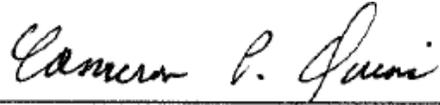
- a. Annually, Components (except OIG) report to CRCL the overall number of harassment complaints received, and, separately, the number of sexual harassment complaints received. This can be done through a CRCL approved Departmental reporting mechanism on a continuous basis.
- b. Annually, Components report to CRCL the Component completion rate of mandatory anti-harassment training.

D. **Relationship with Other Procedures:**

1. Neither this Instruction nor any Component's Anti-Harassment Program or Reporting Procedure affects an employee's right to file an EEO complaint of harassment or discrimination. Reporting an allegation of harassment to a Component's Anti-Harassment Program does not take the place of filing an EEO complaint with the Component's EEO or Civil Rights office. Likewise, reporting an allegation of harassment to a Component Anti-Harassment Program does not toll, or affect in any way, the deadlines or time limits associated with the EEO complaint process (e.g., the requirement to initiate the EEO complaint process within 45 calendar days of the most recent incident of alleged discrimination or harassment).
2. Employees may also file complaints directly with the Office of Special Counsel ([www.osc.gov](http://www.osc.gov)) (OSC), alleging harassment or discrimination. OSC investigates and prosecutes allegations of prohibited personnel actions. Filing a complaint under a Component anti-harassment program does not affect an employee's right to file a complaint with the Office of Special Counsel. Similarly, filing a complaint with OSC does not prevent an employee from also filing a separate complaint with their own EEO Office or Civil Rights Office.
3. Pursuant to Directive 0810.1, [Appendix A](#), all allegations of misconduct by employees at the GS-15 level (or equivalent), or higher must also be referred to the Office of Inspector General (OIG).
4. The filing of a report under this Instruction does not prevent an employee from filing an administrative grievance pursuant to Instruction 256-01-001, "Administrative Grievance System."

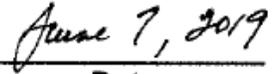
## VII. Questions

Address any questions or concerns regarding this Instruction to the CRCL Anti-Harassment Program Manager or Coordinator.



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Cameron Quinn  
Officer for Civil Rights and Civil Liberties



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Date

**[Component] Procedures for Reporting Allegations of Workplace Harassment**

Any person who believes that he or she has been subjected to or witnessed harassment in violation of the DHS Anti-Harassment Policy should report the matter promptly to his/her first or second-line supervisor, to another management official in his or her chain of command, or to

\_\_\_\_\_ **[Component fills in contact information for the Component Anti-Harassment Program]**. If you are not promptly contacted by an investigator regarding your report, please notify \_\_\_\_\_ **[Components fill in contact information for a supervisor or contact of last resort]**.

Note that reporting allegations of harassment through these avenues does not affect an employee's right to file an EEO complaint of harassment or discrimination. An employee's use of these reporting procedures does not result in an individual complaint of discrimination or harassment. Employees may file EEO complaints of harassment or discrimination based upon race, color, religion, sex (including pregnancy), national origin, age, disability, protected genetic information, gender identity, sexual orientation, parental status, or retaliation by contacting

\_\_\_\_\_ **[Components fill in information about the servicing Office of Equal Employment Opportunity (OEEO)]** within 45 days of the harassment or discrimination, regardless of whether an employee utilizes the procedures established under this policy. Complaints on some grounds can also be made directly to the Office of Special Counsel, including those based upon marital status, political affiliation, or sexual orientation. For complete information on filing such complaints, contact the Office of Special Counsel or visit [www.osc.gov](http://www.osc.gov). Employees choosing to file complaints with the servicing EEO or Civil Rights Office, or with the Office of Special Counsel, must still report harassment in accordance with their Component's harassment reporting procedures, which are available at \_\_\_\_\_ **[Components specify]**.