

**FINANCIAL CRIMES ENFORCEMENT NETWORK**

Check one: Issuance Bulletin Manual Supplement Amendment Revision

SUBJECT: POLICY AND PROCEDURES FOR THE PREVENTION AND ELIMINATION OF WORKPLACE HARASSMENT**1. PURPOSE:**

This Directive is intended to ensure that the Financial Crimes Enforcement Network (FinCEN) is taking all necessary steps to prevent and eliminate sexual harassment and other forms of harassment which are prohibited by applicable federal law. In accordance with the Equal Employment Opportunity Commission's EEO Management Directive 715, FinCEN is committed to establishing and implementing an effective anti-harassment program. This Directive: (1) informs employees about what types of behavior are prohibited in the workplace; (2) establishes an effective complaint reporting procedure; and (3) sets forth responsibilities and procedures for addressing allegations of harassment. FinCEN has zero tolerance for sexual harassment and other forms of harassment based on any characteristic protected by applicable federal law, including race, color, sex, religion, national origin, age, mental or physical disability, sexual orientation, marital status, political affiliation, parental status, protected genetic information or reprisal for prior participation in protected EEO activity. Harassment in the workplace is illegal, disrespectful of an individual's rights, and is damaging to professional, working relationships. Therefore, inappropriate workplace behavior and discriminatory harassment based on a characteristic protected under applicable law by either employees or non-employees (such as clients, vendors or contractors on FinCEN premises), will not be tolerated by FinCEN. Employees who make reports of harassment to FinCEN or who provide information related to such reports will be protected from retaliation. Any retaliation made against any employee or applicant, for reporting discrimination or harassment or assisting in any inquiry, will not be tolerated.¹ FinCEN will conduct a prompt, thorough, and impartial investigation of any harassment claim that is brought to its attention. Complaints of harassment will be kept confidential to the extent possible. When FinCEN determines that a violation of this policy has taken place, management will take prompt and appropriate corrective action. Such corrective action may include disciplinary action, up to and including removal, against any employee who is found to have violated this policy.

2. SCOPE:

This Directive applies to all organizational components of FinCEN. The concept of anti-harassment applies to all aspects of employment, including recruitment, hiring, promotion, reassignments, rotational assignments, training and career development, benefits and separation.

3. AUTHORITY:

- A. Title VII of the Civil Rights Act of 1964, as amended

¹ The Whistleblower Protection Act (WPA) also protects employees against reprisal. The WPA protects employees who provide information reasonably believed to evidence a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health; or a substantial and specific danger to public safety. See www.osc.gov for more information.

- B. Equal Pay Act of 1963, as amended
- C. Age Discrimination in Employment (ADEA) Act of 1967, as amended
- D. The Rehabilitation Act of 1973, Sections 501 and 505, as amended
- E. Americans with Disabilities Act, Titles I and V, as amended
- F. Civil Rights Act of 1991
- G. U.S. Equal Employment Opportunity Commission's (EEOC) Management Directive 715
- H. Title II of the No FEAR Act of 2002
- I. 5 U.S.C. Section 2302(b)(1)
- J. Executive Order 13087, Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government (Sexual Orientation)
- K. Executive Order 13152, Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government (Status as a Parent)
- L. Executive Order 13145, To Prohibit Discrimination in Federal Employment Based On Genetic Information

4. OFFICE OF PRIMARY INTEREST:

Office of Outreach and Workplace Solutions

/s/

James H. Freis, Jr.
Director

POLICY AND PROCEDURES FOR THE PREVENTION AND ELIMINATION OF WORKPLACE HARASSMENT

1. PROGRAM DEFINITIONS:

- A. Ad Hoc Committee: This is a two person Committee established and appointed by the Director, to include the Chief, Office of Outreach and Workplace Solutions and the Assistant Director, Office of Human Resources. The Ad Hoc Committee will assist management in fulfilling FinCEN's commitment and obligation to provide a work environment that is free of discrimination, harassment, reprisal, violence, threats of violence, intimidation and other forms of disruptive behavior, in accordance with federal laws.
- B. Complainant: An individual who reports an allegation of harassment pursuant to and in accordance with this Directive.
- C. Disciplinary Action: Disciplinary action means an action taken by management, in accordance with Directive 950.02: FinCEN Adverse and Disciplinary Action with Table of Penalties, to address any violations of this Directive (e.g., written reprimand, suspension, reduction in grade or pay, removal). Engaging in any harassing conduct, regardless of whether such conduct rises to the level of legally actionable harassment, may result in disciplinary action, up to and including removal.
- D. Employee: A FinCEN employee. This includes a former FinCEN employee if a remedy can be granted that is consistent with applicable federal law.
- E. Harassment: Harassment (sexual and non-sexual) is a form of employment discrimination. Harassment is unwelcome verbal, non-verbal or physical conduct that is based on a characteristic protected by applicable federal law such as race, color, sex, national origin, religion, age, mental or physical disability, marital status, sexual orientation, parental status, political affiliation or reprisal for prior participation in protected EEO activity. Harassment becomes unlawful where enduring the offensive conduct culminates in a tangible employment action, or the conduct is sufficiently severe or pervasive enough to create a hostile work environment.
- F. Hostile Work Environment: Pattern of unwelcome verbal, non-verbal or physical conduct that unreasonably interferes with an individual's job performance or creates an intimidating, hostile, or offensive work environment. To create a hostile workplace environment, the harassment must be so severe or pervasive that it alters the conditions of the victim's employment and creates an abusive work environment. Unless the conduct is very severe, a single or several isolated incidents of offensive conduct or remarks generally will not create a hostile workplace environment. However, even a single instance of indecent and disgraceful conduct toward a coworker may be subject to disciplinary action, up to and including removal.
- G. Immediate and Appropriate Corrective Action: If the investigation reveals a finding of harassment, appropriate management officials will swiftly act in proposing or deciding the appropriate disciplinary action and providing any necessary relief to the victim of the harassment.

- H. Investigative Procedures: In accordance with the Equal Employment Opportunity Commission’s Enforcement Guidance, there must be a prompt, thorough and impartial investigation conducted regarding the allegation of harassment.
- I. Sexual Harassment: Unwelcome sexual advances, requests for sexual favors and other verbal, non-verbal or physical conduct of a sexual nature constitute sexual harassment when:
 - a. Submission to such conduct is made either explicitly or implicitly a term, condition or privilege of employment;
 - b. Submission to or rejection of such conduct by an individual is used as the basis of employment decisions affecting the individual; or
 - 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.²
- J. Supervisor: An individual qualifies as an employee’s “supervisor” if:
 - a. the individual has authority to undertake or recommend tangible employment decisions (e.g., hiring, firing, promoting, demoting, reassignment) affecting the employee; or
 - b. the individual has authority to direct the employee’s daily work activities.

An individual who is temporarily authorized to direct another employee’s daily work activities qualifies as his or her “supervisor” during that time period. However, someone who merely relays other officials’ instructions regarding work assignments and reports back to those officials does not have “supervisory” authority. Furthermore, someone who directs only a limited number of tasks or assignments would not qualify as a “supervisor.” For example, an individual whose delegated authority is confined to coordinating a work project of limited scope is not a “supervisor.”

- K. Tangible Employment Action: A tangible employment action occurs when a supervisor’s harassment results in termination of an employee, denial of promotion or some other significant change in employment status (e.g., hiring, firing, promotion, failure to promote, demotion, undesirable reassignment or a significant change in benefits, a compensation decision or a work assignment). Only an individual with supervisory or managerial responsibilities can commit this type of harassment.
- L. Unwelcome Conduct: Conduct that the employee did not solicit or invite and regarded it as undesirable.

2. PROGRAM RESPONSIBILITIES:

- A. Responsibilities of FinCEN employees are listed below.
 - 1. All FinCEN employees are responsible for:
 - a. Acting professionally and refraining from engaging in inappropriate behavior or harassing conduct in violation of this Directive;

² See www.eeoc.gov/policy/docs/currentissues.html for EEOC’s Notice, entitled “Policy Guidance on Current Issues of Sexual Harassment,” dated March 19, 1990. See also www.eeoc.gov/policy/docs/harassment.html for the EEOC’s “Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors,” dated June 18, 1999.

- b. Reading this Directive and complying with the requirements of the Directive;
 - c. Cooperating with any investigation conducted pursuant to this Directive; and
 - d. Promptly reporting, pursuant to the procedures set forth in this Directive, any incident of harassment or reprisal, regardless of whether the harassing conduct rises to the level of legally actionable harassment. Employees are encouraged to report harassing conduct before such conduct becomes so pervasive or severe as to constitute a hostile work environment. FinCEN cannot prevent harassment in the workplace if the harassing conduct is not known.
2. Supervisors are responsible for and expected to:
- a. Proactively recognize and prevent situations that could potentially lead to harassment in the workplace and retaliation against those who complain of harassment;
 - b. Act immediately, even when the employee allegedly being harassed does not request action against the alleged harasser;
 - c. Protect the confidentiality of harassment complaints to the extent possible;
 - d. Report any incident of harassment that they witness or that is otherwise brought to their attention, regardless of whether the harassing conduct rises to the level of legally actionable harassment;
 - e. In consultation with the Ad Hoc Committee, provide interim relief to the alleged victim of harassment pending outcome of the investigation to ensure that further harassing conduct does not occur; and
 - f. Use the procedures set forth in this Directive and in consultation with the Ad Hoc Committee to take immediate and appropriate corrective action, including, but not limited to, separating the alleged victim and the alleged harasser until completion of the investigation.
3. The Office of Outreach and Workplace Solutions is responsible for:
- a. Receiving allegations of harassing conduct;
 - b. Providing advice and guidance to management concerning the implementation and interpretation of this Directive;
 - c. Conducting or overseeing fair and impartial inquiries into allegations of harassing conduct. The Chief of the Office of Outreach and Workplace Solutions will have the authority to decide who will conduct an inquiry into the allegations of harassment;
 - d. Ensuring that the person conducting the inquiry has had appropriate training in investigating allegations of workplace misconduct;
 - e. Developing complete and accurate guidelines for receiving and handling of complaints of discrimination/harassment in the workplace;
 - f. Coordinating harassment prevention training for all FinCEN employees on a two-year training cycle in conjunction with the No FEAR Act training;
 - g. Disseminating the Directive to all new employees during the new employee orientation process; and
 - h. Advising FinCEN management officials or other persons who need to know of the allegations of harassment and the resolution of those allegations.

4. The Office of Human Resources is responsible for:
 - a. Receiving allegations of harassment; and
 - b. Providing advice to management on taking corrective action, including disciplinary action, for violations of this Directive, in accordance with Directive 950.02: FinCEN Adverse and Disciplinary Action with Table of Penalties.

5. The Ad Hoc Committee is responsible for:
 - a. Receiving allegations of harassment;
 - b. Coordinating and overseeing prompt, thorough and impartial investigations into allegations of harassment. The Ad Hoc Committee will have the authority to decide who will conduct the investigation into an allegation of harassment, provided that the person conducting the investigation has had appropriate training in investigating allegations of workplace misconduct;
 - c. Advising management on the provision of interim relief to the alleged victim of harassment pending the outcome of the investigation to ensure further harassing conduct does not occur;
 - d. Receiving and reviewing investigation reports and communicating investigation findings to appropriate members of FinCEN management; and
 - e. Providing advice to management regarding appropriate corrective action, if warranted.

6. The Office of Chief Counsel is responsible for:
 - a. Providing legal advice to the Ad Hoc Committee concerning the implementation and interpretation of this Directive, as consulted; and
 - b. Providing reviews for legal sufficiency of disciplinary actions being considered, proposed, or taken for violations of this Directive, as consulted.

3. PROCEDURES FOR REPORTING ALLEGATIONS OF HARASSMENT:

A. The process for reporting any forms of harassment may begin through an employee or supervisor as described below. The confidentiality of the allegations will be maintained to the extent possible. Complete confidentiality cannot be guaranteed, since an effective investigation may require the disclosure of certain information to the alleged harasser, potential witnesses, and agency officials. However, information about the harassment complaint will be shared only with those individuals who need to know.

1. FinCEN Employees and Applicants for employment:
 - a. Any FinCEN employee or applicant for employment who believes he/she has experienced harassment can report the incident directly to:
 - i. the Office of Outreach and Workplace Solutions;
 - ii. the Assistant Director, Office of Human Resources;
 - iii. the employee's supervisor. If the allegations are against the employee's immediate supervisor or if the employee does not feel comfortable reporting the incident to his/her immediate supervisor, the employee may report the incident to any other supervisor within the employee's supervisory chain of command;

- iv. contact FinCEN's Office of Outreach and Workplace Solutions hotline at 703-905-5100; or
 - v. Office of Outreach and Workplace Solutions hotmail at WShotmail.fincen.gov.
- b. In all instances, the complainant will be required to complete and sign the Allegation of Harassment in the Workplace Form to acknowledge that he or she has received written notice of their rights and responsibilities as provided in the Allegation of Harassment Form;
 - c. If an employee or applicant for employment wishes to file an EEO complaint, he/she must contact the Office of Outreach and Workplace Solutions within 45 days of the date the discriminatory/harassing incident occurred to consult with an EEO counselor.
2. Supervisor:
- a. When a supervisor becomes aware of the alleged harassment, he/she must promptly meet with the complainant and complete the Allegation of Harassment in the Workplace Form;
 - b. Within 24 hours of speaking with the complainant, the supervisor will report the incident to a member of the FinCEN Ad Hoc Committee and provide the completed Allegation Form;
 - c. The supervisor should ensure that the alleged victim and alleged harasser are appropriately separated until at a minimum, the resolution of the complaint;
 - d. If a supervisor observes harassment, he/she should promptly document the incident by completing an Allegation Form and report the incident to a member of the Ad Hoc Committee, even if he/she has not received any complaints about the observed harassing conduct;
 - e. Any supervisor who knows or has reason to know that harassment may have occurred and who fails to report the harassment to the Ad Hoc Committee may be subject to disciplinary action for his/her failure to act.

4. INVESTIGATIVE PROCEDURES:

- A. After receiving the Allegation of Harassment Form, the Ad Hoc Committee will convene immediately to ensure that a prompt, thorough, and impartial investigation is conducted;
- B. An investigation authorized by the Ad Hoc Committee will to the extent possible be completed within 30 calendar days of assignment;
- C. An investigation authorized by the Ad Hoc Committee constitutes an authorized FinCEN investigation requiring full and complete employee cooperation. Individuals who participate in an investigation will be protected from retaliation;
- D. All investigators will be provided a written letter of authority. Employees failing to cooperate may be subject to disciplinary action. Any statements to the investigators later found to be false may be the subject of additional administrative action, including disciplinary action;
- E. Findings of the investigation may result in a written report. The Ad Hoc Committee will

communicate the investigation findings to the appropriate management officials;

- F. Any investigation initiated by the Ad Hoc committee can be undertaken concurrently with the processing of an individual EEO complaint of discrimination regarding the same or similar issues.

5. IMMEDIATE AND APPROPRIATE CORRECTIVE ACTION:

Upon completion of the investigation, and in consultation with the Ad Hoc Committee, management will promptly determine what corrective action, if any, is appropriate. Action may include, but is not limited to, disciplinary action against the employee found to have violated this Directive.

6. CONTACT INFORMATION:

Ad Hoc Committee on Harassment Prevention

Chief, Office of Outreach and Workplace Solutions
703-905-5052
Assistant Director, Office of Human Resources
703-905-5112

ALLEGATION OF HARASSMENT IN THE WORKPLACE
Form must be completed by Ad Hoc Committee Member or FinCEN Management

Complete and return form within 24 hours of meeting with the complainant/alleged victim.

Management Contacted Date: Time:

Name of Complainant:

Alleged Harassment Date: Time:

Place where alleged harassment occurred:

Explanation of Allegations:

Witness (es):

Complainant::

By signing this Form, I attest that the information I have provided is true and correct to the best of my current knowledge. Also, if I desire to pursue an individual complaint through the EEO process, I must contact an EEO Counselor within 45 calendar days of the alleged incident.

Complainant Signature: _____ Date: _____

Management Official's Signature: _____ Date: _____

Management Official's Telephone Number: _____

Date of Referral to EEO or the Ad Hoc Committee: _____