



U.S. ELECTION ASSISTANCE COMMISSION

Fiscal Year 2019 Annual Report to Congress on the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002

April 7, 2020

I. EXECUTIVE SUMMARY

The U.S. Election Assistance Commission (EAC) was created to help improve American election administration. Congress charged the EAC with a set of wider-ranging, yet distinct, duties that have since been expanded through subsequent legislation. In its earliest days, the agency's work focused on helping states transition from punch-card and lever voting machines to more modern electronic vote tabulation systems. This work included disbursing and auditing more than \$3 billion in federal funds and payments to states, establishing national voluntary voting system guidelines and a voting system testing program, creating a new national clearinghouse for election administration, and conducting research on election administration.

Much has changed since the agency was created, and the EAC's mission remains relevant and critical. Today, election technology is more advanced and complex. Election systems face cyber and physical threats from both nation-state actors and individuals. Election officials must be prepared to defend their systems against a broad spectrum of potential threats, as well as navigate the complexities that stem from other factors such as social media, increasing media attention, and increasingly fluctuating populations.

Today, the EAC carries its charge to assist and to support the nation's election officials and the voters they serve. This work is essential to elections, which are the cornerstone of American democracy.

This report, which covers fiscal year (FY) 2019, is prepared and provides its Annual Report to Congress as required by Title II, Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 ("No FEAR Act" or "Act"), Public Law 107-174. The No Fear Act aims to reduce the incidents of workplace discrimination within the federal government by holding agencies and departments accountable for violations of antidiscrimination and whistleblower protection laws, and requires an annual report.

EAC continues to be diligent in fully utilizing the shared services of the General Services Administration's (GSA) Office of Civil Rights (OCR) to administer the EEO process and moving forward in establishing a diversity/inclusion management program. However, EAC has budgeted for additional staff in (FY) 2020 and one position has been designated for taking on the collateral duties of the EEO Director. The individual will be a direct report to the Executive Director and be the primary driver of the agency's work to further that mission and achieve these goals:

- Advise senior leadership on EEO and diversity-related matters.
- Continue to refine a diversity management program, which includes onboarding, employee engagement, and training.
- Assist and encourage OHR to utilize targeted recruitment to maintain a skilled, diverse, and effective workforce in order to ensure that it has a variety of perspectives involved in decision making.

In addition, the newly identified EEO representative will continue to utilize the GSA OCR to provide services for informal and formal complaints of discrimination and harassment from EAC employees. EAC continues to maintain a relatively low rate of formal complaints due to the diligent work of the Office of Human Resources. With an in-house EEO representative, we expect this trend to continue due to an ongoing increased effort to actively seek resolution during the initial intake and/or the informal counseling process.

II. INTRODUCTION

During Fiscal Year (FY) 2019, EAC was not a party to any Federal district court cases, and as a result, the agency was not required to reimburse the Judgment Fund during FY 2019. No EAC employees were disciplined for discrimination, retaliation, harassment, or other infractions of a provision of law cited in the *No FEAR Act* stemming from Federal district court actions. There were no Equal Opportunity (EO) complaints filed against EAC during FY 2019.

The *No FEAR Act* requires Federal agencies to submit an annual report to the Speaker of the House of Representatives, the President *pro tempore* of the Senate, the Committee on Homeland Security & Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Attorney General, and the Equal Employment Opportunity Commission (EEOC). Additionally, the U.S. Office of Personnel Management's final regulation on the *No FEAR Act* issued on December 28, 2006, requires that the Office of Personnel Management receive a copy of the report. This report is submitted by EAC to satisfy these reporting requirements.

III. BACKGROUND

The *No FEAR Act* was signed into law by President George W. Bush on May 15, 2002, and became effective on October 1, 2003. The *Act* requires Federal agencies to be accountable for violations of anti-discrimination and whistleblower protection laws and to post certain statistical data relating to Federal sector EEO complaints filed with the agency. Section 203 of the *No FEAR Act* requires that each Federal agency submit an annual Report to Congress not later than one-hundred eighty (180) days after the end of each fiscal year. Agencies must report on the number of Federal district court cases arising under each of the respective areas of law specified in the *Act* in which discrimination was alleged; the status or disposition of cases; the amount of money required to be reimbursed; the number of employees disciplined; any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual or committed a prohibited personnel practice; and an analysis of the data collected with respect to trends, causal analysis, etc. The President delegated responsibility to the Office of Personnel Management (OPM) for the issuance of regulations governing implementation of Title II of the *No FEAR Act*. The OPM published final regulations on May 10, 2006, concerning the reimbursement provisions of the *Act*; final regulations to carry out the notification and training requirements of the *Act*, on July 20, 2006; and the final regulations to implement the reporting and best practices provisions of the *Act* on December 28, 2006. EAC has prepared this report based on the provisions of the *No FEAR Act*, along with the final regulations issued by the OPM and the EEOC.

IV. DATA

A. Cases

Section 203(1) of the *No FEAR Act* requires that agencies include in their annual Report to Congress "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201 (a) in which discrimination on the part of such agency was alleged." Section 724.302 of OPM's final regulations issued on December 28, 2006, clarifies section 203 (1) of the *No FEAR Act*, stating that Federal agencies report on the "number of cases in Federal Court pending or resolved ... arising under each of the respective provisions of the Federal Anti-discrimination laws and Whistleblower Protection laws applicable to them ... in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved."

EAC reports that during FY 2019, there were no Federal district court discrimination cases resulting in payments from the Judgment Fund on behalf of the Agency.

B. Reimbursement to the Judgment Fund

OPM published final regulations in the Federal Register on January 22, 2004, and was finalized on May 10, 2006, to clarify the agency reimbursement provisions of Title II of the *No FEAR Act*. These regulations state, among other things, that the Financial Management Service, U.S. Department of the Treasury (FMS), will provide notice to an agency's Chief Financial Officer within 15 business days after payment from the Judgment Fund. The agency is required to reimburse the Judgment Fund within 45 business days after receiving the notice from FMS or must contact FMS to make arrangements, in writing, for reimbursement.

No discrimination cases were filed in Federal district court against EAC during FY 2019.

C. Disciplinary Actions

Section 203(a)(4) of the *No FEAR Act* requires that agencies include in the annual Report to Congress "the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1)." Section 203(a)(1) requires that agencies report "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged." OPM's final regulation issued December 28, 2006, provides that these cases refer to the number of discrimination cases for which the Judgment Fund paid on behalf of the agency. The regulations also define disciplinary actions to include any one or a combination of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal.

EAC reports that there were no disciplinary actions arising from any Federal district court discrimination cases.

D. Final Year End Data

The final year-end data posted pursuant to Section 301(c) (1) (B) of the *No FEAR Act* are included in Appendix A.

The final year-end data indicates that during FY 2019, there were no complaints of discrimination.

E. Policy Direction on Disciplinary Actions

Section 203(a)(6) of the *No FEAR Act* requires that agencies include in their Annual Report to Congress a detailed description of the policy implemented by the agency relating to disciplinary actions imposed against a Federal employee who discriminated against any individual in violation of any of the laws cited under section 201(a) (1) or (2), or committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a) (1) or (2). Further, the *Act* requires that, with respect to each such law, the Federal agency report on the number of employees who were disciplined in accordance with such policy and the specific nature of the disciplinary action taken.

The Executive Director issues primary policy statements that reinforce the Commission's commitment to establish a workplace free from discrimination, harassment, and retaliation. EAC's employees are accountable for their actions in accordance with EAC's Workforce Diversity Policy Statement (See Appendix B), and EAC's Anti-Harassment Policy (See Appendix C).

The first statement emphasizes EAC's determination to subject employees to appropriate disciplinary action for engaging in unlawful discriminatory practices or allowing discriminatory practices to exist. The second statement communicates EAC's zero tolerance of harassment against employees on the basis of race, color, national origin, gender, age, religion, sex, disability, gender identity or expression, sexual orientation, political affiliation, marital or parental status, military service, or engaging in a protected activity. Both of the statements caution that engaging in prohibited behavior will result in appropriate disciplinary actions.

F. No FEAR Training

Section 202(C) of the *No FEAR Act* requires Federal agencies to provide training to their employees on the rights and remedies under Federal Anti-discrimination laws and Whistleblower Protection laws. Under Section 724.203, Federal agencies were required to develop a written training plan and to have trained their employees by December 1, 2006, and every two years thereafter. Under implementing regulations, new employees are to receive *No FEAR Act* training within 90 days of appointment, which can be met through an agency orientation or training program.

EAC's OHR established a training plan that new onboarding staff must complete, and all employees must repeat every two years. EAC has a subscription for LRP Publications' No Fear Act e-learning course. Internet-based, the course is available to all EAC employees and enables the agency to ensure that employees complete the required training. Even though the requirement

is biennial, due to staff turnover and the ease of implementing the training online, we have implemented the training annually.

V. ANALYSIS OF TRENDS, CAUSAL ANALYSIS AND PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE

Section 203(7) of the *No FEAR Act* requires that agencies undertake "an examination of trends, causal analysis, and practical knowledge gained through experience and any actions planned or taken to improve complaint or civil rights programs of the agency."

EAC has examined the information reported and finds that, since the effective date of the No FEAR Act, there has been only one EEO complaint filed and no Federal district court hearings. This statistic illustrates EAC's ongoing effort and commitment to maintaining a diverse and an inclusive workforce as well as a diverse workplace environment.

Conducted at least biennially, No FEAR Act training also contributes to EAC's low complaint total.

EAC's compliance and review under this section illustrates the diversity of our workforce. As was reported in EAC's MD-715 Report to the EEOC for FY 2019, of the 3 employees at the Executive level (Pay band V) and 9 at the Senior-level (Pay band IV), 45 percent are male and 55 percent are female. Looking at race and ethnicity at those levels, 45.5 percent are White, 45.5 percent are Black and Hispanic or Latino representation is 9 percent. There is no representation at that level for Asians. The Mid-level (Pay band III) has 4 male employees and 6 female employees. The race and ethnicity breakdown at that level is 70 percent White, 20 percent Black and 10 percent Hispanic or Latino. There is no representation at that level for Asians. Looking at disabled employment for FY 2019, EAC has a workforce with 4 percent disability status (one of EAC employee has a targeted disability). EAC will continue its effort to recruit qualified disabled employees in FY 2020.

VI. ADJUSTMENT TO BUDGET

Section 203(a) (8) of the *No FEAR Act* requires that agencies include in their annual report to Congress information about "any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201."

EAC did not provide any adjustment.

VII. EAC'S ACTIONS PLANNED/TAKEN TO IMPROVE CIVIL RIGHTS PROGRAMS

- A. EAC continually seeks to improve its processes for preventing and addressing discrimination. This includes offering training for staff and executive/senior level management, and improving the agency's EEO policies and procedures.

- B. Managers and supervisors are instructed to take the legislation seriously and are held accountable for their actions or inactions in accordance with established disciplinary policies and procedures and performance evaluations.
- C. EAC will continue to encourage a healthy EEO/diverse and inclusive environment by including employee engagement, retention, and focus on corporate culture, mentoring, and management skills training in the overall OHR training plan. Training will be provided to all managers and senior leaders on unconscious bias, soft skills, conflict resolution, and mentoring.
- D. EAC will explore using alternate dispute resolution methods to resolve workplace conflicts so that they can be resolved swiftly and at a high rate.
- E. EAC will acknowledge that changes and growth in the workplace tend to trigger more complaints. Therefore, better communication from leadership to all employees about changes to policies, practices, and ongoing reorganizations, will be utilized to mitigate any future complaints. When employees are potentially affected by change, timely and candid communication from all levels is essential to avoiding workplace conflict and/or complaints.

VIII. ACCOMPLISHMENTS

- Continued work on the design of diversity and inclusion program activities and services at EAC.
- Continued participation in onboarding new staff with special efforts to facilitate their adjustment to EAC's cultural environment.
- Revised agency policies on Harassment and Reasonable Accommodations.
- Provided *mandatory* training to all employees on preventing and addressing harassment.
- Established an employee engagement committee.
- Reinstated the Intern Program that lead to the hire of a qualified candidate in a job group where there is underutilization.

APPENDIX A

EEO Data Posted Pursuant to the No Fear Act

Table 1: 29 CFR §1614.704 (a) – (c)		29 CFR §1614.705 Comparative Data Previous Fiscal Years					
Complaint Activity	FY 2019	2018	2017	2016	2015	2014	2013
Number of Complaints Filed in FY 1614.704(a)	0	1	0	0	0	0	0
Number of Complaints 1614.704(b)	0	1	0	0	0	0	0
Repeat Filers 1604.704(c)	0	0	0	0	0	0	0

Table 2: 29 CFR §1614.704 (d)		29 CFR §1614.704 Comparative Data Previous Fiscal Years					
Complaint by Basis	FY 2019	2018	2017	2016	2015	2014	2013
Race	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0
Sex (including complaints filed under Equal Pay Act)	0	0	0	0	0	0	0
Disability	0	1	0	0	0	0	0
Age	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0

Table 3: 29 CFR §1614.704 (e)		29 CFR §1614.704 Comparative Data Previous Fiscal Years					
Complaint by Issue	FY 2019	2018	2017	2016	2015	2014	2013
Appointment/Hire	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0
<i>Demotion</i>	0	0	0	0	0	0	0
<i>Reprimand</i>	0	0	0	0	0	0	0
<i>Suspension</i>	0	0	0	0	0	0	0
<i>Removal</i>	1	0	0	0	0	0	0
<i>Other</i>	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0
<i>Non-Sexual</i>	0	0	0	0	0	0	0
<i>Sexual</i>	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0
<i>Denied</i>	0	0	0	0	0	0	0
<i>Directed</i>	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0

Table 4: 29 CFR §1614.704 (f)							
Processing Time	FY 2019	2018	2017	2016	2015	2014	2013
Number of days in Investigation Stage	0	0	0	0	0	0	0
Number of days in Final Action Stage	0	0	0	0	0	0	0
Complaints pending (for any length of time) during fiscal year where hearing was requested during fiscal year							
Number of days in investigation stage	0	0	0	0	0	0	0
Number of days in Final Action Stage	0	0	0	0	0	0	0
Complaints pending (for any length of time) during fiscal year where hearing was not requested during fiscal year							
Number of days in investigation stage	0	0	0	0	0	0	0
Number of days in Final Action Stage	0	0	0	0	0	0	0

Table 5: 29 CFR §1614.704 (g)		29 CFR §1614.704 Comparative Data Previous Fiscal Years					
Complaints Dismissed to Agency Pursuant to §1614.704 (a)	FY 2019	2018	2017	2016	2015	2014	2013
Total complaints dismissed	0	1	0	0	0	0	0
Average days pending prior to dismissal	0	22	0	0	0	0	0

Table 6: 29 CFR §1614.704 (h)		29 CFR §1614.705 Comparative Data Previous Fiscal Years												
Total Final Agency Actions Finding Discrimination	FY 2019		2018		2017		2016		2015		2014		2013	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings 704(h)(1)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Without Hearing 704(h)(2)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
With Hearing 704(h)(3)	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 7: 29 CFR §1614.704 (i)		29 CFR §1614.705 Comparative Data Previous Fiscal Years												
Findings of Discrimination Rendered by Basis	FY 2019		2018		2017		2016		2015		2014		2013	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings 704(i)(1)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Without Hearing 704(i)(2)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
With Hearing 704(i)(3)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Race</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Color</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Religion</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>National Origin</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Sex (including Equal Pay Act)</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Disability</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Age</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Reprisal</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 8: 29 CFR §1614.704 (j)		29 CFR §1614.705 Comparative Data Previous Fiscal Years												
Findings of Discrimination Rendered by Issue	FY 2019		2018		2017		2016		2015		2014		2013	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings 704(j)(1)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Without Hearing 704(j)(2)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
With Hearing 704(j)(3)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Appointment/Hire</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Assignment of Duties</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Awards</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Conversion to Full-time</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Disciplinary Action</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Demotion</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Reprimand</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Suspension</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Removal</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Other</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Duty Hours</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Evaluation Appraisal</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Examination/Test</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Harassment</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Non-Sexual</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Sexual</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Medical Examination</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Pay (Including Overtime)</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Promotion/Non-Selection</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0

<i>Reassignment</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Table 9: 29 CFR §1614.704 (j)	29 CFR §1614.705 Comparative Data Previous Fiscal Years													
Findings of Discrimination Rendered by Issue	FY 2019	2018		2017		2016		2015		2014		2013		
<i>Denied</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Directed</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Reasonable Accommodation</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Reinstatement</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Retirement</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Termination</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Terms/Conditions of Employment</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Time and Attendance</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Training</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Other</i>	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 10: 29 CFR §1614.704 (k)	29 CFR §1614.705 Comparative Data Previous Fiscal Years						
Complaints Pending from Previous Fiscal Years by Status	FY 2019	2018	2017	2016	2015	2014	2013
Total Complaints from Fiscal Years 1614.704(k)(1)	0	0	0	0	0	0	0
Total Complaints 1614.704(k)(2)	0	0	0	0	0	0	0
<i>Number of complaints pending as of 9/30: 704(k)(3)</i>							
Investigations)	0	0	0	0	0	0	0
ROI issued, pending Complainant's action	0	0	0	0	0	0	0
Hearing	0	0	0	0	0	0	0
Final Agency Action	0	0	0	0	0	0	0
Appeal with Administrative Judge	0	0	0	0	0	0	0

Table 11: 29 CFR §1614.704 (l)	29 CFR §1614.705 Comparative Data Previous Fiscal Years						
Complaints Pending from Previous Fiscal Years by Status	FY 2019	2018	2017	2016	2015	2014	2013
Number of Pending Completion of Investigation	0	0	0	0	0	0	0
Pending Investigations over Required Time Frames	0	0	0	0	0	0	0

APPENDIX B

Workforce Diversity Policy Statement

The U.S. Election Assistance Commission (EAC) is committed to fostering, cultivating and preserving a culture of diversity and inclusion. Key to developing this is developing and maintaining effective leaders, managers, and employees who treat all persons with dignity and respect, without regard to non-merit factors such as race, color, national origin, gender, age, religion, sexual orientation, disability, gender identity, political affiliation, marital or parental status, or military service. We strive to provide a work environment free of sexual, racial, ethnic, religious or other harassment,

EAC's human capital is its most valuable asset. The collective sum of the individual differences, life experiences, knowledge, inventiveness, innovation, self-expression, unique capabilities and talent that our employees invest in their work represents a significant part of not only our culture, but our reputation and agency's achievement as well. I am firmly committed to promoting a climate of mutual respect and appreciation for the strengths of, and differences between, all our employees.

We embrace and encourage our employees' differences. Every EAC manager, supervisor, and employee is expected to carry out this policy. Implicit in each employee's "successful" work performance, and explicit in each supervisor's performance rating, is support of EAC's workforce diversity and civil rights policies and programs, and the fostering of an inclusive workplace where diversity and individual differences are valued. Any person who violates this policy will be subject to appropriate disciplinary action, up to and including termination.

EAC's diversity initiatives are applicable—but not limited—to our practices and policies on recruitment and selection; compensation; professional development and training; promotions; reassignments; reduction in force; terminations; and the ongoing development of a work environment built on the premise of gender and diversity equity that encourages and enforces:

- Respectful communication and cooperation between all employees.
- Teamwork and employee participation, permitting the representation of all groups and employee perspectives.
- Work/life balance through flexible work schedules to accommodate employees' varying needs.
- Employer and employee contributions to the communities we serve to promote a greater understanding and respect for the diversity.

All employees have a responsibility to treat others with dignity and respect at all times. All employees are expected to exhibit conduct that reflects inclusion during work, at work functions on or off the work site, and at all other EAC-sponsored and participative events. All employees are also required to attend and complete annual diversity awareness training to enhance their knowledge to fulfill this responsibility.

Employees who believe they have been subjected to any kind of discrimination that conflicts with the EAC's diversity policy and initiatives or in retaliation for opposition to discrimination or participation in discrimination complaint proceedings (e.g., as a complainant or witness), should seek assistance from a supervisor or the Office of Human Resources. Discrimination claims not brought to the attention of OHR within 45 days of their occurrence may not be accepted in a formal complaint of discrimination.

APPENDIX C

EAC'S ANTI-HARASSMENT POLICY

Purpose

It is the U.S. Election Assistance Commission (EAC) policy to ensure that every employee enjoys a non-hostile work environment free of discrimination or harassment of any kind. All employment decisions; such as hiring, promoting, training and rewarding, will be made exclusively on the basis of job-related criteria; e.g., employees' knowledge, skills, abilities and performance. Disciplinary actions will be taken solely on the bases of employees' behavior and performance. Discrimination of any kind based on race, color, religion, sex, sexual harassment, national origin, age, handicap, sexual orientation, reprisal, marital status, political affiliation, parental status or non-job-related conduct is forbidden and subject to appropriate disciplinary action. EAC is proud of its record in providing equal employment opportunity to all and will seek to prevent, correct and discipline behavior that violates this policy.

Scope

All employees, regardless of their positions, are covered by and are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension, or termination of employment.

Prohibited Conduct Under This Policy

EAC, in compliance with all applicable anti-discrimination and harassment laws and regulations, enforces this policy in accordance with the following definitions and guidelines:

DISCRIMINATION

It is a violation of EAC's policy to discriminate in the provision of employment opportunities, benefits or privileges; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person's race, color, national origin, age, religion, disability status, gender, sexual orientation, gender identity, genetic information, parental status, marital status or political affiliation.

RACE

Discrimination based on race is prohibited by Title VII of the Civil Rights Act of 1964. Racial discrimination occurs when persons are treated differently than others who are similarly situated because they are members of a specific race; e.g., White, Black, Asian, etc. Examples of employees who are similarly situated may be those working in the same position and pay band, or under the same line of supervision.

Racial discrimination also occurs when persons are treated differently because of unalterable characteristics; e.g., physical features indigenous to their race. Courts have held that racial discrimination in employment can also occur when employees are treated differently because of their interracial dating or marriage, or their membership in racially oriented groups.

COLOR

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on color. This type of discrimination occurs when persons are treated differently than others who are similarly situated because of the color of their skin. Color discrimination can occur together with race discrimination, but may also occur between members of the same race.

NATIONAL ORIGIN

Discrimination based on national origin is prohibited by Title VII of the Civil Rights Act of 1964. National origin discrimination includes that based on an individual's or his or her ancestors' place of origin, or physical, cultural or linguistic characteristics. Other examples include discrimination based on marriage to, or association with, persons of a national origin group; attendance or participation in schools or religious organizations used by a national origin group; and an individual's or spouse's name which is associated with a national origin group. Requiring employees to speak English at all times, including breaks and lunch periods, is an example of an employment practice that discriminates against persons whose primary language is not English.

AGE

Discrimination based on age is prohibited by the Age Discrimination in Employment Act of 1967. For Federal employees, the protected age group is age 40 and above, with no upper age limit. Age discrimination also occurs among age groups who are over age 40; e.g., the selection of a 45-year old candidate may appear to be discriminatory to 55-year old candidates if it can be shown that management has never selected a candidate at or above age 55.

Excluding older employees from training opportunities, denying them special work assignments which would give them experience for promotions or awards, and attempting to persuade or influence them to retire are other examples of age discrimination.

RELIGION

Discrimination based on religion is prohibited by Title VII of the Civil Rights Act of 1964. In defining religious discrimination, the United States Supreme Court held that religion is not limited to Orthodox or well-recognized denominations; e.g., Catholic, Baptist or Judaism. All that is required is a sincere and meaningful belief equivalent to the belief in God held by the more well-recognized religions. Atheists are also protected.

Religious discrimination can occur in two ways. The first is by treating employees or applicants for employment differently because of their religion. The second occurs when an employment rule

or policy violates a fundamental belief, principle or practice of one's religion and management fails to provide an accommodation. Religious practices are not limited to worship, but may include attendance at meetings and retreats, or the wearing of certain attire.

Management's obligation to accommodate begins when the employee notifies them of the need for an accommodation. Once notified, management should consider alternatives and offer one which would not create an undue hardship for the agency or disadvantage other employees. Undue hardships are determined on a case-by-case basis.

DISABILITY STATUS

Discrimination based on disability is prohibited by the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. Disability discrimination can occur in two ways. The first occurs when employees or applicants are treated differently on the basis of their physical or mental disabilities. The second occurs when management fails to make reasonable accommodation for the disabling condition(s).

A person with a disability is defined as one who has a physical or mental impairment which substantially limits one or more major life functions; e.g., walking, speaking, breathing, learning, etc.; one who has a record of such, or one who is regarded as having a disability.

Management must make reasonable accommodation to the known physical or mental limitations of qualified applicants or employees with disabilities unless the accommodation would impose an undue hardship upon the agency. Qualified persons with disabilities are those who, with or without accommodation, can perform the essential elements of the job. Otherwise qualified applicants with disabilities may not be rejected for employment on the grounds that reasonable accommodation would have to be made.

Reasonable accommodation can include modifying job-related procedures, tasks or requirements (other than critical generic job tasks), adjusting the employee's work schedule, altering the physical work space, providing special equipment, providing readers for the visually impaired, interpreters for the hearing impaired, etc. Medical proof of disability is usually required when an employee requests an accommodation. The reasonableness of the accommodation and the creation of undue hardships are determined on a case-by-case basis.

See EAC's reasonable accommodation policy for the criteria to evaluate requests and the procedures to obtain equipment, readers, interpreters and personal assistants.

GENDER

Discrimination based on sex is prohibited by Title VII of the Civil Rights Act of 1964. Sex discrimination may occur in two ways. The first is a policy or practice which treats similarly situated men or women differently from the opposite gender. The second occurs when a gender-neutral policy or practice has a disproportionate adverse effect on one of the genders.

Discrimination in violation of this policy will be subject to disciplinary measures up to and including termination.

GENDER IDENTITY

Discrimination based on gender identity is not specifically prohibited under federal law at this time, however; in [*Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821, 2012 WL 1435995 \(April 20, 2012\)](#), the EEOC held that intentional discrimination against a transgender individual because that person's gender identity is, by definition, discrimination based on sex and therefore violates Title VII.

GENETIC INFORMATION

Discrimination based on genetic information is prohibited by Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA). Examples GINA discrimination include:

- An employer may not use genetic information in making decisions regarding hiring, promotion, terms or conditions, privileges of employment, compensation, or termination.
- An employer may not use genetic information in making decisions regarding admission or employment in any program for training and retraining, including on-the-job training.

PARENTAL STATUS

Executive Order 13152 states explicitly that discrimination based upon an individual's status as a parent is prohibited within the Executive Branch of the Federal Government. The Executive Order adds parental status to the list of categories for which discrimination is prohibited. The other categories are race, color, religion, sex, national origin, handicap, age, sexual orientation, marital status, political affiliation and conduct not adversely affecting employee performance.

The Executive Order is designed to prevent intentional discrimination against employees solely because they are parents. It is not designed to place other employees at a disadvantage or to give parents preference.

The Executive Order refers to "status as a parent" as the status of an individual who, with respect to an individual who is under the age of 18, or who is 18 or older but is incapable of self-care because of a physical or mental disability, is: a biological parent; an adoptive parent; a foster parent; a stepparent; a custodian of a legal ward; *in loco parentis* to such an individual; or actively seeking legal custody or adoption of such an individual.

A person stands "in loco parentis" when he or she has day-to-day responsibility to care for and financially support a child. A biological or legal relationship is not necessary. The Executive Order does not cover a person who simply provides daily childcare to a family.

If you believe you have been discriminated against on the basis of parental status, under certain circumstances, you may seek assistance from the Merit Systems Protection Board, Office of Special Counsel; negotiated grievance procedure; equal employment opportunity (EEO)

discrimination complaints process; or your first-line supervisor or someone higher in your chain of management.

MARITAL STATUS

Discrimination based on marital status is prohibited by the Code of Federal Regulations, 5 CFR 720.901. This type of discrimination occurs when management demonstrates a preference for employees or applicants who are married or single. An example would be assuming that married employees have family responsibilities which limit their ability to travel, and hiring only those applicants who are known to be single for a job requiring much travel.

POLITICAL AFFILIATION

The United States Code, 5 USC 2302, prohibits discrimination based on political affiliation. Discrimination based on political affiliation occurs when management demonstrates a preference for, or aversion to, employees or applicants belonging to a particular political party or having associates with connections to a particular political party. An example might be hiring only those applicants, and promoting only those employees, known to be members of a given party during a period when that party heads the administration.

SEXUAL ORIENTATION

Discrimination based on sexual orientation is directed at persons who are gay, lesbian, bisexual or transgender, who are perceived to be gay, lesbian, bisexual or transgender or who associate with persons who are gay, lesbian, bisexual or transgender. This may take the form of harassment or treatment that is different than that afforded similarly situated employees or applicants.

To address sexual orientation discrimination, employees should contact the Office of Human Resources (OHR). Employees' right to address sexual orientation discrimination derives from EAC's policy, not from Equal Employment Opportunity Commission (EEOC) regulations which govern other types of discrimination complaints processing. If counseling does not lead to a resolution, complainants will be told in writing of their right to file a formal complaint and given the procedure for doing so. Following an EEO investigation, the Employee Equal Opportunity Office at the General Services Administration (GSA), EAC's shared service provider, makes the final decision on the complaint. Unlike complaints based on other forms of discrimination, sexual orientation complainants do not have appeal rights to EEOC.

HARASSMENT

EAC prohibits harassment of any kind, including sexual harassment, and will take appropriate and immediate action in response to complaints or knowledge of violations of this policy. For purposes of this policy, harassment is any verbal or physical conduct designed to threaten, intimidate or coerce an employee, co-worker, or any person working for or on behalf of EAC.

The following examples of harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

- Verbal harassment includes comments that are offensive or unwelcome regarding a person's national origin, race, color, religion, gender, sexual orientation, age, body, disability or appearance, including epithets, slurs and negative stereotyping.
- Nonverbal harassment includes distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles or shows hostility, aversion or disrespect toward an individual or group because of national origin, race, color, religion, age, gender, sexual orientation, pregnancy, appearance, disability, sexual identity, marital status or other protected status.

SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination and is prohibited by Title VII of the Civil Rights Act of 1964. In 1980, the Equal Employment Opportunity Commission issued guidelines defining sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any of three criteria are met:

- Submission to the conduct is made either explicitly or implicitly a term or condition of employment;
- Submission to or rejection of the conduct is used as a basis for employment decisions; or
- The conduct has the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment may be verbal or physical, exhibited by a man to a woman, by a woman to a man, or within the same gender. Examples of behaviors which could constitute sexual harassment are touching, sexual innuendo, suggestive comments, threats, and nude or sexual pictures, cartoons or calendars, etc.

REPRISAL

Discrimination based on reprisal is prohibited by Title VII of the Civil Rights Act of 1964. Reprisal occurs when employees are treated differently because they are, or were, involved in a protected EEO activity; e.g., seeking or participating in EEO counseling, providing testimony in an EEO investigation or at an EEO hearing, filing a discrimination complaint, or speaking out against discriminatory activities.

Lodging a bona fide complaint will in no way be used against the employee or have an adverse impact on the individual's employment status. However, filing groundless or malicious complaints is an abuse of this policy and will be treated as a violation.

Any person who is found to have violated this aspect of the policy will be subject to discipline up to and including termination of employment.

NON-JOB-RELATED CONDUCT WHICH DOES NOT ADVERSELY AFFECT THE PERFORMANCE OF EMPLOYEES AND APPLICANTS FOR EMPLOYMENT

The Civil Service Reform Act of 1978 prohibits discrimination on the basis of non-job-related conduct which does not adversely affect the performance of employees or applicants for employment. EAC's policy prohibits employees who are authorized to take, direct others to take, recommend, or approve any personnel action from discriminating on the basis of non-job-related conduct. Authorized employees are held responsible for the prevention of prohibited personnel practices, as well as for compliance with, and enforcement of, all applicable civil service laws, rules and regulations.

Applicants and employees are protected from inquiries into, or actions based upon, non-job-related conduct; e.g., religious, community or social affiliations, or sexual orientation. They are also protected from any infringement of due process, self-incrimination or other constitutional rights. However, applicants competing for positions may receive credit for paid or unpaid religious, civic, welfare, service and organizational work which demonstrates possession of the knowledge, skills or abilities needed to perform the duties of the positions being filled.

In determining the suitability or fitness of an employee or applicant, this policy does not prohibit EAC managers from taking into account the employee's or applicant's conviction for any crime under the laws of any state or the District of Columbia.

MAINTAINING A NON-HOSTILE WORKPLACE FREE OF DISCRIMINATORY HARASSMENT

EEOC regulation 29 CFR, Part 1614, Section 102 (a) (3) requires agencies to remove every form of prejudice or discrimination from personnel policies, practices and working conditions. A hostile work environment allows ridicule, abuse, insults or derogatory comments that are directly or indirectly based on race, color, national origin, sex, sexual harassment, religion, age, handicap, sexual orientation, reprisal, marital status, political affiliation or parental status. It is further defined as an offensive or intimidating environment that unreasonably interferes with work performance or that otherwise adversely affects employment opportunities. Personal conversations that can be overheard by other employees who consider the conversation offensive can also create a hostile environment.

Management is responsible for maintaining a non-hostile work environment and can be held accountable for, not only their behavior, but that of their employees. If an employee makes abusive or derogatory comments of the type noted above to another employee and the matter comes to management's attention, management must take prompt action.

Such allegations should be confirmed with the employees directly involved in the incident along with any witnesses who might have firsthand information. It is very important to demonstrate to concerned employees that the allegations are taken seriously and that management will not

condone offensive behavior. Disciplinary or other remedial action should reflect management's findings during the course of the inquiry.

EAC will follow guidance regarding harassment established by the Equal Employment Opportunity Commission (EEOC) and standards regarding harassment set by the Supreme Court in two landmark decisions: *Burlington Industries, Inc. v. Ellerth* 118 S. Ct. 2257 (1998) and *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998). In these decisions, the Supreme Court made clear that employers are subject to vicarious liability for unlawful harassment by supervisors. Liability is premised on two principles: 1) an employer is responsible for the acts of its supervisors; and 2) employers should be encouraged to prevent harassment and employees should be encouraged to avoid or limit the harm from harassment.

Employees are responsible to come forward and report any behavior they view as harassment *before* it becomes severe or pervasive. While isolated incidents of harassment generally do not violate federal law, a pattern of incidents may be unlawful. Employees are also responsible to take advantage of any preventive or corrective opportunities provided by EAC or to otherwise avoid harm.

Managers have a responsibility to maintain a workforce environment that is free from harassment. When an employee complains to management about alleged harassment, management is obligated to investigate the allegation regardless of whether the complaint conforms to a particular format or is made in writing.

Confidentiality

All complaints and investigations are treated confidentially to the extent possible, and information is disclosed strictly on a need-to-know basis. The identity of the complainant is usually revealed to the parties involved during the investigation, and the Director of Human Resources will take adequate steps to ensure that the complainant is protected from retaliation during and after the investigation. All information pertaining to a complaint or investigation under this policy will be maintained in secure files within the OHR.