NASA Procedural Requirements

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COMPLIANCE IS MANDATORY

Anti-Harassment Procedures

Responsible Office: Office of Diversity and Equal Opportunity

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Change Log
NPR 3713.3, Anti-Harassment Procedures

Change #	Center	Date Approved	Description
1	Office of Diversity and Equal Opportunity	06/07/2010	Administrative changes made to establish Appendix D to make accessible the following NASA Forms: NASA Form 1794, Checklist of Basic Information to Alleged Harassers NASA Form 1795, Alleged Harassment Rights and Responsibilities NASA Form 1796, Authorization of Fact-Finding Letter NASA Form 1797, Statement of Facts NASA Form 1798, Harassment Activity Reporting/Tracking .

Preface

P.1 Purpose

a. This NPR establishes Agency-wide procedural requirements under which NASA employees and contractors shall report allegations of harassing conduct and sets forth the managers' and supervisors' responsibilities to maintain a harassment-free workplace and to take prompt and effective action when allegations of harassment arise. The NPR also identifies roles and responsibilities for the coordination of anti-harassment efforts at the Agency and Center levels and provides guidance and instruction to NASA supervisors and managers on receiving, coordinating, reviewing, processing, and resolving allegations of harassing conduct. These procedures will assist NASA in fulfilling its obligations: (1) to prevent harassment before it becomes severe or pervasive; (2) to conduct a prompt, thorough, and impartial investigation into allegations of harassing conduct; and (3) to take immediate and appropriate corrective action when the Agency determines that harassing conduct has occurred. This NPR does not cover allegations of harassment brought by contractors against their own (contractor) supervisors and/or contractor coworkers.

b. The rationale for this NPR derives from the Supreme Court in the cases of Burlington Industries v. Ellerth, 524 U.S. 742 (1998), and Faragher v. City of Boca Raton, 524 U.S. 775 (1998), both of which emphasized the need for effective anti-harassment procedures to prevent and correct harassing conduct promptly. Such anti-harassment policy and procedures do not exist for the same purposes as the Equal Employment Opportunity (EEO) complaints process. The EEO process is designed to make individuals whole for discrimination that already has occurred. For example, where discrimination is found to have occurred, make-whole relief may include damage awards and equitable relief paid by the agency, designed in part to have the effect of preventing the recurrence of the unlawful discriminatory conduct. The internal anti-harassment process, on the other hand, is intended to take immediate and appropriate corrective action, including the use of disciplinary actions, to eliminate harassing conduct regardless of whether the conduct violated the law. Therefore, the goal of this NPR is to address harassing conduct at the earliest possible stage, before it can become "severe or pervasive," i.e., harassment within the meaning of anti-discrimination law.

c. For the purposes of this NPR, harassing conduct is defined as any unwelcome conduct, verbal or physical, based on an individual's race, color, gender, national origin, religion, age, disability, sexual orientation, status as a parent, genetic information, or gender identity, or retaliation for making reports or allegations of harassment or providing information related to such allegations when: (1) the behavior can reasonably be considered to adversely affect the work environment or (2) an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

d. This NPR is designed to address all harassing conduct on the bases defined above. The process established under this NPR is entirely separate and apart from the EEO complaints process. An employee who reports harassment in accordance with this NPR has not filed an EEO complaint under 29 CFR 1614 and NPD 3713.6P. An employee who wishes to file a complaint with EEO shall contact his/her Center EO Office within 45 days of the alleged harassment.

P.2 Applicability

This NPR is applicable to NASA Headquarters, NASA Centers including Component Facilities and

the Technical and Service Support Centers. Unless otherwise indicated, use of the word Center(s) in the text of this NPR includes NASA Headquarters and the NASA Shared Services Center. Any reference to Center Director(s) includes the Executive Director for the Office of Headquarters Operations and the Executive Director, NASA Shared Services Center. The Office of the Inspector General has statutory independence and may create a separate anti-harassment procedure that more effectively meets its needs.

P.3 Authority

a. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. S 2000e-16.

b. Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. S 633a.

c. Rehabilitation Act of 1973, as amended, 29 U.S.C. SS 791, 794, and 794a.

d. Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4214.

e. Americans with Disabilities Act of 1990, 42 U.S.C. S 12101 et seq.

f. Executive Order 13087 (May 28, 1998), amending Executive Order 11478 (August 9, 1969), Equal Employment Opportunity in Federal Government.

g. Executive Order 13152 (May 2, 2000), amending Executive Order 11478 (August 9, 1969), Equal Employment in Federal Government.

h. NASA Policy Directive 3713.2, Federal Equal Opportunity Programs of NASA.

i. NASA Policy Statement on Non-Harassment (issued annually).

P.4 Applicable Documents

a. Privacy Act of 1974, Privacy Act, 5 U.S.C. 552a.

b. NASA Procedural Requirements 1441.1, NASA Records Retention Schedules.

c. NPR 1382.1, NASA Privacy Procedural Requirements.

d. NASA Policy Directive 2025.1, NASA Ombuds Program.

e. EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 1999).

f. EEOC, Model EEO Programs Must Have An Effective Anti-Harassment Program (September 2005).

P.5 Measurement/Verification

a. Centers shall periodically evaluate the operations and success of their Center's Anti-Harassment process in consultation with the Office of Diversity and Equal Opportunity and cooperate with periodic data-gathering and other evaluation activities. These shall include, for example, reporting on the number and bases of allegations over time, ensuring that the fact-finding and other actions taken in response to allegations are in accordance with the requirements of this directive.

b. Centers shall maintain case files pertaining to this NPR, in accordance with NPR 1441.1, NASA

Records Retention Schedules.

P.6 Cancellation

None.

/S/
Thomas S. Luedtke
Associate Administrator for
Institutions and Management

Chapter 1. Roles and Responsibilities

1.1 Employees

1.1.1 It is the responsibility of all employees to refrain from engaging in harassing conduct.

1.1.2 It is the responsibility of NASA employees who believe that they have been the victim of harassment by another civil service employee or contractor in violation of NASA policy to report the matter immediately to their supervisor, the Center Anti-Harassment Coordinator, or other official(s) as designated by the Center Director.

1.1.2.1 In the event that the person to whom the alleged harassment is reported fails to take prompt action, the employee shall immediately report the alleged harassment to the Center Anti-Harassment Coordinator.

1.1.2.2 In the event that the employee's first line supervisor is the alleged harasser, the employee shall contact the second line supervisor, the Center Anti-Harassment Coordinator, or other official(s) as designated.

1.1.3 Any employee who contacts the NASA Ombuds Office regarding an allegation of harassment does not put the Agency on notice that a harassment allegation has been made unless the alleged harassment is a crime, consistent with NPD 2025.1A, NASA Ombuds Program.

1.1.4 All employees have a responsibility to cooperate in any fact-finding regarding an allegation of harassment.

1.2 Supervisors and Managers

1.2.1 Supervisors and managers shall be responsible for maintaining a work environment free of harassment.

1.2.2 Supervisors or managers who observe or are made aware of allegations of harassing conduct as defined above shall act promptly, effectively, and in accordance with this NPR to determine the scope of the alleged harassing conduct and take corrective or disciplinary action as appropriate and necessary.

1.2.3 In responding to specific allegations of harassing conduct, supervisors and managers shall:

1.2.3.1 Consult with the Center Anti-Harassment Coordinator and other appropriate officials consistent with this NPR and Center policy and practice, e.g., Equal Employment Opportunity (EEO), Human Resources (HR), and the Office of the Chief Counsel (or the Office of the General Counsel in the case of Headquarters).

1.2.3.2 Conduct, after consultation with the Center Anti-Harassment Coordinator and other officials as appropriate, any fact-finding that may be necessary (see Sec. 1.4, below).

1.2.3.3 Provide appropriate interim relief, as necessary, during the fact-finding.

1.2.3.4 Act as or designate the Fact Finder to conduct fact-findings into allegations of harassment where fact-finding is necessary (see Sec. 1.10, below).

1.2.3.5 Take appropriate corrective action, including disciplinary action, as necessary after

consultation and notification of appropriate officials.

1.2.3.6 Notify the alleged harassee of the completion and general outcome of the process, consistent with the Privacy Act.

1.2.4 In instances where the first-line supervisor is the alleged harasser, or if it is determined through the fact-finding process that the supervisor is involved in the allegation, another management official shall perform the responsibilities outlined above.

1.2.5 The management official shall normally be the next higher level supervisor or manager in the chain of command, who shall consult with the Center Anti-Harassment Coordinator, or other official(s) as designated, to address the matter.

1.3 Assistant Administrator for Diversity and Equal Opportunity

1.3.1 It shall be the responsibility of the Assistant Administrator (AA), Office of Diversity and Equal Opportunity (ODEO), to ensure the effective functioning of anti-harassment policy and procedures, in consultation with the Office of Human Capital Management and the Office of the General Counsel.

1.3.2 The AA, ODEO, shall designate an individual to serve as the Agency Anti-Harassment Coordinator.

1.4 Agency Anti-Harassment Coordinator

1.4.1 The Agency Anti-Harassment Coordinator shall have the following responsibilities for all anti-harassment matters as defined in this directive:

1.4.1.1 Interface regularly with Center Anti-Harassment Coordinators (see Sec. 1.6, below) regarding all matters pertaining to anti-harassment.

1.4.1.2 Monitor, in consultation with the Center Anti-Harassment Coordinators, the effectiveness of the Center anti-harassment efforts within the purview of this directive, including maintaining information on the number of allegations of harassment, the bases for the allegations, and the actions taken.

1.4.1.3 Develop training and technical assistance on the Agency Anti-Harassment policy and procedures, including, but not limited to, training for designated Center Anti-Harassment Coordinators and Fact Finders, training modules for all new managers and supervisors on Agency anti-harassment policy and procedures, periodic training for managers and supervisors, incorporation into employee orientation materials (e.g., handbooks, brochures), and consultation with Centers on their own education and awareness efforts regarding anti-harassment.

1.4.1.4 Develop Agency Anti-Harassment informational materials (e.g., fact sheets, brochures) for Agency-wide dissemination.

1.5 Center Director

1.5.1 The Center Director shall appoint an individual to serve as the Center Anti-Harassment Coordinator and may formally appoint other officials to establish multiple points of contact for employees to raise allegations of harassing conduct.

1.5.2 To ensure the independence of the anti-harassment process from the EEO complaints process and the integrity of the anti-harassment process, when selecting a Coordinator, the Center Director shall take into consideration the appearance of conflict of interest with the EEO complaint process and the potential chilling effect on the EEO process. For example, if the Center Anti-Harassment Coordinator resides in the Center's EO Office, the head of the EO Office shall ensure that there is a "firewall" separating the EO Office's participation on anti-harassment matters from its role in the discrimination complaints process.

1.5.3 The Center Director shall ensure:

1.5.3.1 The effective functioning of the process, as identified in this directive, in consultation with the AA, ODEO.

1.5.3.2 The appropriate dissemination of information regarding this directive to all Center employees.

1.6 Center Anti-Harassment Coordinator

1.6.1 The Center Anti-Harassment Coordinator is an official at each Center whose responsibility regarding anti-harassment matters as defined in this directive shall be to:

1.6.1.1 Assist managers and supervisors regarding allegations of harassment, e.g., fact-finding, as appropriate.

1.6.1.2 Assist managers and supervisors in ensuring prompt and appropriate corrective action is taken if the Agency determines that harassing conduct has occurred.

1.6.1.3 Ensure that the fact-finding is completed, in the event that the manager or supervisor has failed to take prompt action.

1.6.1.4 Provide consultation and verification to managers and supervisors with respect to the competency of the designated Fact Finder.

1.6.1.5 Ensure the Center maintains case files pertaining to this NPR, in accordance with the Privacy Act of 1974, NPR 1441.1, NASA Records Retention Schedules, and NPR 1382.1, NASA Privacy Procedural Requirements. (see Appendix D. Forms for NASA Forms applicable to this NPR).

1.6.2 The Center Anti-Harassment Coordinator also shall be responsible for:

1.6.2.1 Working in partnership with the Agency Anti-Harassment Coordinator to provide appropriate training on and evaluation of the anti-harassment procedures at the Center level.

1.6.2.2 Publicizing anti-harassment policy and procedures throughout the Center, to ensure that the names and locations of the Agency Anti-Harassment Coordinator and the Center Anti-Harassment Coordinators at each Center and at Headquarters are readily available, including appropriate dissemination of Agency anti-harassment policy, procedures, and informational materials Center-wide, including but not limited to, posting on Center web sites and in common areas around the Center.

1.7 Center Chief Counsel's Office

1.7.1 The Center Chief Counsel or designee shall be consulted and shall provide legal advice, as needed.

1.7.2 At Headquarters, the General Counsel or designee shall provide legal advice, as needed.

1.8 Equal Employment Opportunity Office

1.8.1 The head of the EO Office or designee shall provide advice on EO matters.

1.8.2 As stated in Section 1.5.1, if the Center Anti-Harassment Coordinator resides in the Center's EO office, the head of the EO Office shall ensure that there is a "firewall" separating the EO Office's participation on anti-harassment matters from its role in the discrimination complaints process.

1.9 Center Human Resources Office

1.9.1 The head of the Human Resources (HR) Office, or designee, shall provide advice on HR matters.

1.10 Fact Finder

1.10.1 The Fact Finder shall be appointed by the manager or supervisor, in consultation with the Center Coordinator , to conduct a thorough inquiry/investigation into the allegation(s) of harassment, to the extent that the manager or supervisor does not personally act as the Fact Finder, consistent with Sec. 1.2.3.4.

1.10.2 The Fact Finder shall not be subordinate to any official involved in the matter being investigated.

1.10.3 The Fact Finder shall be impartial and competent to perform the fact-finding, as verified by the Center Anti-Harassment Coordinator.

1.10.4 Upon the completion of the fact-finding, the Fact Finder shall prepare a Fact-Finding Report to be given to the manager or supervisor and the Center Anti-Harassment Coordinator.

Chapter 2. Anti-Harassment Procedures

2.1 Immediate Response

2.1.1 NASA employees who believe that they have been the victim of harassment that they believe to be in violation of NASA policy are expected to report the matter immediately to their supervisor, the Center Anti-Harassment Coordinator, or other official(s) as designated by the Center Director.

2.1.1.1 In the event that the person to whom the alleged harassment is reported fails to take prompt action, the employee shall immediately report the alleged harassment to the Center Anti-Harassment Coordinator.

2.1.1.2 In the event that the employee's first line supervisor is the alleged harasser, the employee shall contact the second line supervisor, the Center Anti-Harassment Coordinator, or other official as designated.

2.1.2 If an official other than the first-line supervisor receives the allegation, he or she shall immediately refer the matter to the aggrieved employee's first-line supervisor.

2.1.3 In the event that the employee's first line supervisor is the alleged harasser, the official shall contact the second line supervisor, Center Anti-Harassment Coordinator, or other official as designated.

2.1.4 Upon receiving an allegation of harassment or witnessing what is believed to be harassing conduct, the supervisor shall immediately:

2.1.4.1 Assess the situation to determine the severity of the alleged misconduct and whether any immediate corrective action is required.

2.1.4.2 Immediately consult with the Center Anti-Harassment Coordinator and/or with subject-matter experts, e.g., HR, EEO, Chief Counsel, to determine whether a fact-finding or other action is warranted.

2.1.5 Where fact-finding is warranted, immediately conduct and promptly complete a fact-finding. A supervisor may instead choose to designate a Fact Finder, depending on the circumstances.

2.1.6 If the allegation involves a contract employee being harassed by another contract employee at a NASA facility, the supervisor shall immediately contact the Director of Procurement for referral to the appropriate contracting official.

2.2 Fact-Finding

2.2.1 The fact-finding shall include, at a minimum, interviews with: (1) the alleged victim, (2) the alleged harasser(s), and (3) any witnesses to the alleged conduct.

2.2.2 The fact-finding shall be confined solely to the allegations of harassment. (Fact Finders shall refer other allegations brought to their attention during the course of the fact-finding to the appropriate office, i.e., EEO, HR. Such allegations shall not be part of the written report.)

2.2.3 The Fact Finder shall document any refusal to cooperate in the fact-finding process (see Appendix B, providing guidance on questions for fact-finders in harassment inquiries).

2.2.4 A written report (Fact-Finding Report) shall be prepared by the Fact Finder.

2.2.4.1 The information contained in the Fact-Finding Report shall include a summary of all fact-finding steps taken and evidence gathered.

2.2.4.2 A copy of the report shall be provided to the manager or supervisor (where the manager or supervisor does not personally conduct the fact-finding) and the Center Anti-Harassment Coordinator promptly after the fact-finding is completed.

2.2.5 The Center Anti-Harassment Coordinator shall maintain fact-finding and related records in accordance with the Privacy Act, NPR 1441.1, NASA Records Retention Schedules, and NPR 1382.1, NASA Privacy Procedural Requirements.

2.2.6 All information shall remain confidential to the greatest extent possible with the greatest possible care taken to ensure the privacy of those involved and information pertaining to the matter shared strictly on a "need to know" basis. The maintenance of records and any disclosures of information from these records shall be in compliance with the Privacy Act, 5 U.S.C. 552a, NPR 1441.1, NASA Records Retention Schedules, and NPR 1382.1, NASA Privacy Procedural Requirements.

2.3 Action to be Taken Upon Completion of the Fact-Finding

2.3.1 The supervisor shall immediately review the results of the fact-finding and determine in consultation with the Center Anti-Harassment Coordinator and subject matter experts, e.g., HR, EEO, Chief Counsel, what action, if any, is recommended in the case and take action, as necessary.

2.3.2 No action shall be taken involving the alleged harassee, e.g., transferring the victim to another office, without his or her consent.

2.3.3 The manager or supervisor shall notify the alleged harassee of the completion and general outcome of the process, consistent with the Privacy Act.

Appendix A. Definitions

A.1 Harassing Conduct. For the purposes of this policy, harassing conduct is defined as any unwelcome conduct, verbal or physical, based on an individual's race, color, gender, national origin, religion, age, disability, sexual orientation, status as a parent, gender identity, or retaliation when: the behavior can reasonably be considered to adversely affect the work environment, or an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

A.2 Fact Finder. A person designated to investigate allegations of harassment, make findings of fact, and write a Fact-Finding Report. The Fact Finder shall not be subordinate to any official involved in the matter being investigated.

A.3 Fact-Finding. Information gathered regarding allegations of harassment. The extent of the fact-finding will vary based on the circumstances of the alleged harassing conduct.

A.4 Fact-Finding Report. A written report prepared by the Fact Finder. The information contained in the Fact-Finding Report will include a summary of all investigative steps taken and evidence gathered. The report will be provided to the Center Anti-Harassment Coordinator and will be kept in the Center Anti-Harassment Coordinator's case file.

Appendix C. References

C.1 Guidelines on Discrimination Because of Sex, 29 CFR Part 1604.

C.2 Practices and Procedures, Appellate Jurisdiction, 5 CFR S 1201.3.

C.3 NASA Policy Directive 1600.3, Policy on Prevention of and Response to Workplace Violence.

C.4 EEOC Management Directive 715.

Appendix B. Questions to Ask Parties and Witnesses

B.1 The information contained in this appendix is excerpted from U.S. Equal Employment Opportunity Commission, Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999).

B.2 When detailed fact-finding is necessary, the Fact Finder should interview the alleged harassee, the alleged harasser, and third parties who could reasonably be expected to have relevant information. Information relating to the personal lives of the parties outside the workplace would be relevant only in unusual circumstances. When interviewing the parties and witnesses, the Fact Finder should refrain from offering his or her opinion. The following are examples of questions that may be appropriate to ask the parties and potential witnesses. Any actual fact-finding should be tailored to the particular facts.

B.3 Questions to Ask the Alleged Harassee:

B.3.1 Who, what, when, where, and how: Who committed the alleged harassment? What exactly occurred or was said? When did it occur and is it still ongoing? Where did it occur? How often did it occur? How did it affect you?

B.3.2 How did you react? What response did you make when the incident(s) occurred or afterwards?

B.3.3 Are there any persons who have relevant information? Was anyone present when the alleged harassment occurred? Did you tell anyone about it? Did anyone see you immediately after the alleged harassment?

B.3.4 Did the person who you believe harassed you harass anyone else at that time? Do you know whether anyone complained about harassment by that person?

B.3.5 Are there any notes, physical evidence, or other documentation regarding the incident(s)?

B.3.6 How would you like to see the situation resolved?

B.3.7 Do you know of any other relevant information?

B.4 Questions to Ask the Alleged Harasser:

B.4.1 What is your response to the allegations? If you disagree with the facts related, give us your recollection of the who, what, when, where, and how for the alleged event(s).

B.4.2 Are there any persons who have relevant information?

B.4.3 Are there any notes, physical evidence, or other documentation regarding the incident(s)?

B.4.4 Do you know of any other relevant information?

B.5 Questions to Ask Third Parties:

B.5.1 What did you see or hear? When did this occur? Describe the alleged harasser's behavior toward the harassee and toward others in the workplace.

B.5.2 What did the harassee tell you? When did she/he tell you this?

B.5.3 Do you know of any other relevant information?

B.5.4 Are there other persons who have relevant information?

Appendix D. Forms

NASA Form 1794, Checklist of Basic Information to Alleged Harassers

NASA Form 1795, Alleged Harassment Rights and Responsibilities

NASA Form 1796, Authorization of Fact-Finding Letter

NASA Form 1797, Statement of Facts

NASA Form 1798, Harassment Activity Reporting/Tracking