

SBA

SOP 37 15

Anti-Harassment Policy & Procedures

Office of Diversity, Inclusion & Civil Rights (ODI&CR)

U.S. Small Business Administration



**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**

National

SUBJECT: Anti-Harassment Standard Operating Procedures
(SOP)

S.O.P. 37 15

SECTION

INTRODUCTION

1. Purpose. To update the Agency's Anti-harassment policy and procedures with the goal of creating a harassment-free workplace and preventing unlawful harassment. This SOP supersedes any and all previous policies on harassment at the SBA.
2. Personnel Concerned. This SOP applies to all SBA employees, including employees of the Office of the Inspector General (OIG) and Office of Disaster Assistance (ODA).
3. Originator. Office of Diversity, Inclusion & Civil Rights (ODI&CR).

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SBA Anti-Harassment Policy & Procedures

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- I. Purpose:** The purpose of this SOP is to outline the U.S. Small Business Administration’s (“SBA” or “Agency”) anti-harassment policy and procedures to ensure that the Agency is taking all steps necessary to prevent sexual harassment and other forms of harassing conduct. SBA is firmly committed to fostering a culture of civility and respect in the workplace. The Agency strives to maintain a work environment where all SBA employees are treated with dignity and respect. SBA endeavors to correct the harassing conduct before it becomes so severe or pervasive so as to constitute a legal claim of harassment.
- II. Policy:** SBA does not permit harassing conduct by anyone in the workplace. It is SBA’s policy to maintain a work environment free from harassment and other forms of discrimination for all of its employees. In addition, SBA will strive to proactively prevent harassment and other forms of discrimination based on race, color, religion, sex (including pregnancy and gender identity), age (40 or over), national origin, disability (mental or physical), sexual orientation, marital or parental status, family medical history or genetic information, or political beliefs. The most effective way to limit harassing conduct is to treat it as prohibited conduct, even if it does not rise to the level of harassment actionable under Title VII of the Civil Rights Act of 1964. As such, the conduct covered by this SOP is broader than the legal definition of unlawful harassment. SBA will not tolerate retaliation against any employee for making a good-faith report of harassing conduct under this or any other policy or procedure or for assisting in any inquiry about such a report.
- III. Scope:** This policy applies to all SBA employees, including employees of ODA and OIG. For the purposes of this SOP, employee refers to any person employed directly by SBA. This SOP supersedes any and all previous policies on harassment at the SBA. Furthermore, these procedures set forth in this SOP are separate and distinct from any collective bargaining, administrative, or statutory complaint process(es) covering harassment.
- IV. Authority:** The laws or directives that guide implementation of SBA’s Anti-Harassment SOP include, but are not limited to:
- a. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16;
 - b. The Age Discrimination in Employment Act, 29 U.S.C. § 633a;
 - c. The Rehabilitation Act of 1973, as amended September 25, 2009 (Public Law 101-336); and
 - d. Executive Order 11478, as amended May 28, 1998 and as further defined May 2, 2000, Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA).
- V. Definitions**
- A. Unlawful Harassment:** Unlawful harassment includes intimidation, ridicule, insult, comments or physical conduct based on race, color, religion, sex (whether or not of a sexual nature), sexual orientation, national origin, age (40 years of age or over),

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disability (physical and/or mental), family medical history, genetic information and retaliation for raising an issue relating to these protected bases where:

1. An employee's acceptance or rejection of such conduct explicitly or implicitly forms the basis for an employment decision affecting the employee; or
2. The conduct is sufficiently severe or pervasive so as to alter the terms, conditions or privileges of the employee's employment, or otherwise create a hostile work environment.

B. Sexual Harassment: Sexual harassment is deliberate, unsolicited, or unwelcomed sexual advances. It includes requests for sexual favors, sexual advances and/or other sexual conduct when (1) submission is either explicitly or implicitly a condition affecting employment decisions; (2) the behavior is sufficiently severe or pervasive so as to create an intimidating, hostile or offensive environment; or (3) the behavior persists despite objection by the person to whom the conduct is directed. Sexual harassment may occur between persons of the opposite or same sex. Both males and females can be either the victims or the offenders. When sexual harassment affects employment decisions or creates an offensive working environment, it is both a violation of Title VII of the Civil Rights Act of 1964 and the Civil Service Reform Act of 1978 (specifically, the merit systems principles, 5 USC § 2301).

C. Prohibited Harassing Conduct: The conduct covered by this Policy is broader than the legal definition of unlawful harassment listed above and includes hostile conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, or retaliation for raising an issue related to the protected bases, even if the conduct has not risen to the level of illegality. This is because the goal of this Policy is to avoid, or at least limit, harm to any employee subjected to unwelcome hostile conduct based on a protected characteristic by ensuring that appropriate officials are notified of and have an opportunity to promptly correct such conduct before it becomes so severe or pervasive as to violate the law, or as soon as possible thereafter.

VI. Responsibilities

A. ODI&CR Responsibilities: The Assistant Administrator/ODI&CR or designee is responsible for the following:

1. Serving as SBA's Anti-Harassment Coordinator;
2. Ensuring SBA's anti-harassment policy and procedures is posted on SBA's intranet site and easily accessible to employees.
3. Ensuring that SBA employees are informed of the policy and the procedures to follow when reporting hostile or harassing conduct;
4. Providing technical assistance and support to assure compliance with the policy;

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5. Advising supervisors and managers on the process of carrying out a limited inquiry in response to allegations of harassment, taking action to insulate the alleged victims of harassing conduct from further hostile or abusive conduct pending the outcome of a limited inquiry, and taking action to ensure further misconduct does not occur;
6. Advising senior management officials who have a need to know about the allegations of harassment and the resolution of allegations under this SOP;
7. Monitoring and assuring fair inquiries are carried out under this SOP;
8. Providing technical guidance concerning the information to be gathered and methods to be used during inquiries;
9. Assuring that the inquiries are swift, thorough, and impartial;
10. Promptly responding to any employee who feels that he or she has been subjected to unlawful retaliation in violation of this SOP;
11. Developing compliance metrics for this SOP and coordinating with the Office of Human Resource Solutions (OHRS) to ensure that performance plans of supervisors and managers include a performance measure addressing compliance with this SOP;
12. Reporting the number of reports of harassment under this SOP to the Agency's senior leadership team and the Equal Employment Opportunity Commission (EEOC), as required;
13. Providing training for managers and supervisors on SBA's Anti-harassment policy and procedures upon request; and,
14. Maintaining a copy of harassment/discrimination inquiry-related records and files in a safe and secure location. Records should be retained for 2 years and then securely disposed.

B. Office of Human Resources Solutions (OHRS) Responsibilities: OHRS will be responsible for the following:

1. Providing guidance to managers and supervisors on taking action to insulate the alleged victim(s) of harassing conduct from further hostile or abusive conduct, pending the outcome of a limited inquiry;
2. Providing guidance to managers and supervisors on taking appropriate disciplinary actions, if it is determined that the alleged conduct violates this SOP;
3. For concerns involving OIG employees, the OIG Human Resources Office will function as OHRS.
4. For incidents involving ODA employees, the ODA's Office of Disaster Strategic Engagement & Effectiveness will provide guidance to managers and supervisors on taking appropriate disciplinary actions if it is determined that the alleged conduct violates this SOP; and
5. In consultation with ODICR, ensuring that performance plans of all SBA managers and supervisors have a performance measure relating to compliance with this policy.

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C. Office of General Counsel (OGC) Responsibilities: OGC will be responsible for the following:

1. Providing legal advice and counsel to managers and supervisors concerning interpretation of this SOP;
2. For incidents involving OIG employees, the OIG Counsel Division will be responsible for providing legal advice and counsel to managers and supervisors concerning interpretation of this SOP; and
3. In consultation with OHRS, providing advice and counsel on the legal sufficiency of all disciplinary actions taken as a result of a harassment or discrimination complaint.

D. SBA Managers and Supervisors Responsibilities: All SBA managers and supervisors will be responsible for the following:

1. Maintaining a work environment that is free of harassing, hostile, and discriminatory conduct and providing clear guidance to employees to prevent harassment in the workplace and retaliation against those who complain of harassment;
2. Ensuring that the Anti-Harassment policy is posted in conspicuous locations throughout their facility and requesting training to ensure they have a clear understanding of their role and responsibilities under the Anti-Harassment Policy and that all of their employees have received training.
3. Receiving and handling allegations of harassing conduct within the timeframes outlined in section VIII of this SOP “Management Response to Harassment” and appropriately, utilizing the procedures set forth below;
4. Immediately reporting to the Assistant Administrator/ODI&CR pursuant to the reporting procedures set forth in Section VIII of this SOP, all incidents of hostile or harassing conduct that they witness or that are otherwise brought to their attention, even if an employee requests that no action be taken;
5. In consultation with ODI&CR and appropriate OHRS management officials, provide interim relief to the alleged victim of harassing conduct, pending the outcome of a limited inquiry to ensure that further misconduct does not occur;
6. Consult with OHRS and OGC to take prompt and appropriate disciplinary action in accordance with SOP 37 52 [Discipline and Adverse Actions](#), against personnel who have engaged in harassing conduct or who have failed to carry out their responsibilities under this SOP;
7. Keeping information limited to individuals with a need to know and protecting the confidentiality of the individuals reporting harassment and individuals who participate as witnesses in informal inquiries to the greatest extent possible; and
8. Maintaining all harassment inquiry-related records and files in a safe and secure location separate from the employee’s personnel file. These records should be retained for 2 years and then securely disposed.

E. SBA Employee Responsibilities: All SBA employees are expected to:

1. Understand their rights and responsibilities under this policy;

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2. Participate in periodic anti-harassment training when offered;
3. Refrain from engaging in harassing conduct;
4. Cooperate with any inquiry made pursuant to this policy; and
5. Promptly report all incidents of hostile or harassing conduct, pursuant to the reporting procedures set forth below, before the misconduct becomes severe or pervasive so as to constitute a hostile work environment.

VII. Reporting Allegations of Harassment

- A. Any employee who has been subjected to hostile or harassing conduct in violation of this SOP is encouraged to inform the individual(s) responsible for the behavior that the conduct is unwelcome and/or offensive and request that it cease.
- B. If the conduct continues, or if the individual is uncomfortable confronting the responsible persons(s) about the conduct, he or she should report the harassing behavior to either:
 1. His or her immediate/first-line supervisor,
 2. The supervisor of the individual responsible for the conduct,
 3. A supervisor outside of his or her chain-of-command, or
 4. The Assistant Administrator of ODI&CR
- C. Individuals who know of hostile or abusive conduct directed at others are encouraged to report the matter to the supervisor of the employee whose conduct is considered to be harassment, another supervisor or management official, or to the Assistant Administrator of ODI&CR.

NOTE: Reports made pursuant to these procedures DO NOT replace, substitute, or otherwise satisfy the separate obligations of an EEO complaint, grievance/arbitration procedure, Merit Systems Protection Board appeal, or other process. For further information concerning employee rights under one of these separate processes, see the Agency's Avenues of Redress Chart available on [ODI&CR's intranet site](#).

VIII. Management Response to Harassment

- A. **Notifying Appropriate Officials:** Once a supervisor or manager receives an allegation of or witnesses harassing conduct, whether within or outside of his or her chain of command, he or she has a duty to act and must take prompt action to:
 1. Inform ODI&CR and seek guidance as to further action;
 2. If the Assistant Administrator/ODICR receives an allegation of hostile or harassing conduct, either directly or through a supervisor or other source, he or she will inform the appropriate management official in the employees' chain of command who will then seek guidance as to further action.
- B. **Addressing Conflicts of Interest:** If a senior level management official (e.g., Regional Administrator, District Director, etc.) or first-line supervisor of the

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employee alleging a violation is implicated in the potentially harassing conduct, the Assistant Administrator/ODICR shall be responsible for determining who should conduct the limited inquiry and direct any further investigation that may be warranted. Any other conflicts of interest will be resolved in the same manner.

C. Conducting a Limited Inquiry: If in consultation with ODI&CR, a limited inquiry is deemed necessary, the manager or supervisor designated to conduct the limited inquiry should take the following actions *within 4 business days*:

1. In consultation with ODI&CR, OHRs and appropriate management officials, take action to stop any harassing conduct and prevent further harassment, which may include taking action to insulate the alleged victims of harassing conduct from further hostile or abusive conduct; and
2. In consultation with ODI&CR, conduct a prompt, thorough and impartial limited inquiry using the “Guide for Supervisors” (see Appendix 1) to:
 - a. Determine who may be involved;
 - b. Gather the facts surrounding the alleged incidents of harassment;
 - c. Determine whether the conduct at issue violates SBA’s Anti-Harassment policy, and
 - d. Determine whether any corrective action(s) is required.

D. Confidentiality: All reports of hostile or harassing conduct should be treated as confidential to the greatest extent possible. The identity of the employee alleging violations of SBA’s anti-harassment policy will be kept confidential, except as necessary to conduct an appropriate inquiry into the alleged violations or when otherwise required by law. The summary of the limited inquiry, including documentation prepared under this procedure, shall be kept confidential to the greatest extent possible. The maintenance of records and any disclosures of information from these records shall be in compliance with the Privacy Act, 5 U.S.C. Section 552a.

E. Summary of Limited Inquiry: When a limited inquiry has been conducted, a written summary of the inquiry should be prepared by the individual(s) conducting the inquiry and should be submitted *within 5 business days* after the completion of the limited inquiry to the Assistant Administrator/ODICR and the senior management official presiding over the office in which the alleged violations occurred. The summary of the limited inquiry should contain the following:

1. An outline of the alleged harassing incident(s);
2. A summary of the facts and findings from the limited inquiry;
3. Any witness statements or written statements (affidavits) obtained from those individual(s) interviewed;
4. Any supporting documentation;
5. An initial determination on whether the conduct violated SBA’s Anti-Harassment Policy; and

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6. Any recommendation(s) of corrective actions needed.

F. Determining Policy Violations: Upon submission of the summary of the limited inquiry, the individual(s) conducting the inquiry will consult with senior management official(s) and ODI&CR to evaluate the evidence and determine if the Agency's Anti-harassment policy was violated. If the first-line supervisor was involved in the allegation, then that responsibility will rest with the manager or supervisor designated by the Assistant Administrator/ODICR to conduct the limited inquiry.

G. Further Investigation: In cases involving multiple allegations and/or multiple individuals or where otherwise deemed necessary, the Associate Administrator/ODI&CR, in consultation with OGC and OHRS, will determine if further investigation or other actions are warranted. The Associate Administrator/ODI&CR has the discretion to decide whether further investigation is required, or if the preliminary inquiry is sufficient to determine whether corrective action is necessary. These decisions will be made on a case-by-case basis.

IX. Taking Corrective Action

- A.** Where the limited inquiry establishes that an employee did engage in hostile and harassing conduct under this SOP, the manager or supervisor designated to conduct or oversee the limited inquiry will determine the appropriate corrective action in consultation with ODI&CR, OHRS and OGC based on [SOP 37 52 Discipline and Adverse Actions](#).
- B.** Appropriate corrective action will depend on the severity and/or pervasiveness of the conduct as well as on other factors made on a case-by-case basis. Possible actions could include but are not limited to:
1. If the conduct consisted of only an occasional remark that is offensive but not severe in nature, corrective action may consist of discussing the matter with the responsible individual(s), explaining why it was inappropriate, instructing him or her that it should not continue, and requiring appropriate training.
 2. For the most serious incidents, corrective action may include any disciplinary action otherwise available for violations of conduct standards, such as suspension, demotion, termination, or removal based on SOP 37 52.
- C.** Appropriate corrective action, disciplinary or otherwise, will be taken against any supervisor or other management official who fails to perform her/his obligations as set forth in this SOP, including any unreasonable failure to report known violations of the Agency's Anti-Harassment policy.

Please note: The Office of ODI&CR should be informed of all corrective action determinations, including a decision not to act.

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Responding to a Report of Harassment: Supervisor's Guide

The Manager/Supervisor Has a Duty to Act

Once a supervisor or management official becomes aware of allegations of hostile and/or harassing conduct within his or her chain-of-command, he or she must promptly take the following actions *even if the individual reporting the conduct does not want the supervisor or management official to take action:*

- Inform the Assistant Administrator of ODI&CR and seek guidance regarding specific actions to take;
- In consultation with ODI&CR, OHRS and OGC, consider taking action to stop any harassing conduct and prevent further harassment;
- Conduct a prompt, thorough, and impartial limited inquiry in consultation with ODI&CR;
- In consultation with OHRS, OGC & ODI&CR take immediate and appropriate corrective action when it is determined that harassment has occurred.

Conducting a Limited Inquiry

Where a limited inquiry is deemed necessary, the supervisor should conduct a limited, expeditious and impartial limited inquiry in consultation with ODI&CR ***within 4 business days*** of witnessing, or receiving a complaint concerning, hostile or harassing conduct in order to:

- Determine the parties who may be involved;
- Determine what conduct is at issue, and gather the facts surrounding the alleged incident(s);
- Determine whether the conduct at issue violates SBA's Anti-Harassment policy; and
- Determine whether any corrective action(s) are required.

Reporting Results of an Limited Inquiry

A written summary of the inquiry shall be prepared by the individual(s) conducting the inquiry and shall be submitted ***within 5 business days after the completion of the limited inquiry to the Assistant Administrator, ODI&CR*** and should include the following:

- An outline of the alleged harassing incident(s)
- Witness statements
- Determinations on whether the conduct violated SBA's Anti-Harassment Policy
- And any corrective actions recommended

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APPENDIX 1A

Responding to a Report of Harassment: Limited Inquiry Question Guide

Managers and supervisors are encouraged to use the following as a guide when conducting a limited inquiry to determine if the alleged harassment or hostile conduct violates SBA's Anti-harassment policy; however, they are not required to use these exact questions. Managers and supervisors should contact ODI&CR with any questions about conducting a limited inquiry.

Questions for the Complainant

1. What is your name?
2. Which office or division of the SBA do you work for at this time?
3. How long have you been employed at the SBA?
4. What is your current job title?
5. Briefly describe your duties and responsibilities as a [job title].
6. Please describe the specific events and dates when the actions that you have raised as harassment/creating a hostile environment occurred (who, what, when, where)?
7. How did you respond when this/these event(s) occurred?
8. Did you indicate to the individual that this behavior was unwelcome?
 - a. If so, how?
9. Did others witness these events (who, how, and what)?
10. Have you witnessed the person who you feel harassed you harass anyone else?
 - a. Do you know whether anyone else has complained about harassment?
11. Are there any notes, physical evidence, or documentation regarding the incident(s)?
12. Are you aware of the Agency's anti-harassment policy?
13. Did you take any action to avoid further harm by the [alleged harasser's name]?
14. At this time, did you complain about the harassment/hostile work environment?
 - a. If so, who did you tell, when, and what did you tell the person?
 - b. What happened as a result of your complaint? Did the harassment/hostile work environment stop or improve?

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15. How would you like to see this situation resolved?
16. Is there any other relevant information you would like to share?

Questions for the Alleged Harasser

1. What is your name?
2. Which office or division of the SBA do you work for at this time?
3. How long have you been employed at the SBA?
4. What is your current job title?
5. Briefly describe your duties and responsibilities as a [job title].
6. What is your work relationship with [complainant's name]?
7. On [date], [describe details of alleged event(s) claimed by complainant as harassment/hostile work environment].
 - a. Can you tell me about this? How would you describe this?
8. Did [complainant name] notify you that the conduct was unwelcome?
 - a. What form did this notification take? What was said?
9. What was your reaction? How did you respond?
10. [If alleged harasser asserts that the complainant's claims are false] What reason does [complainant name] have to lie about this?
 - a. What does [complainant name] stand to lose or gain from reporting this?
11. Are you aware of the agency's anti-harassment policy?
12. Are there any persons who have relevant information?
13. Do you know of any other relevant information pertaining to these allegations?
14. Are there any notes, physical evidence or other documentation regarding the incidents?

Questions for Witnesses

1. What is your name?
2. Which office or division of the SBA do you work for at this time?
3. How long have you been employed at the SBA?
4. What is your current job title?
5. Briefly describe your duties and responsibilities as a [job title].
6. What is your work relationship with [complainant's name] and [alleged harasser's name]?
7. On [date], [describe details of alleged event(s) claimed by complainant as harassment/hostile work environment].
 - a. Can you tell me about this? How would you describe this?
 - b. What did you see or hear?
8. How would you describe [alleged harasser's name] behavior toward [complainant's name]?
 - a. How does [alleged harasser's name] behave towards others in the office?
9. Are you aware if [complainant name] told [alleged harasser name] that this conduct was unwelcome?
 - a. How did you come to know this?
10. Did you and [complainant name] ever discuss the harassment/hostile work environment?
 - a. When/what was substance of conversation?
11. Did you observe any actions taken by [complainant name] regarding the harassment?
 - a. If so, what, where, when did you observe?
12. Do you know of any other relevant information?
13. Are there other persons who have relevant information?

Questions for Responsible Management Official in Chain of Command

1. How/when did you become aware that [complainant's name] complained about harassment/hostile work environment by [alleged harasser's name]?
2. What actions did you take once you became aware of the harassment/hostile work environment complaint (who, what, where, when)?
3. Did you offer any preventive or corrective action? If so, please describe.
4. Do you know if [complainant name] took advantage of this proposed solution?
 - a. Why/why not?
5. Are you aware of any previous complaints against [alleged harasser's name]? If so, what actions did the Agency take in response to the complaint(s)?
6. How is the Agency's anti-harassment policy disseminated to your staff?
7. When was the last time that the supervisors in your chain of command were provided EEO training?