

PART 2045 - GENERAL

Subpart LL - Rural Development Anti-Harassment Policy and Complaint Procedures

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PART 2045 - GENERAL

Subpart LL - Rural Development Anti-Harassment Policy and Complaint Procedures

§ 2045.1851 Purpose:

This Instruction applies to all non-bargaining unit employees. The implementation of this Instruction is for employees represented by labor organizations (unions) is contingent upon completion of appropriate bargaining obligations in accordance with the Federal Labor Management Relations Statute.

This Instruction outlines Rural Development's (RD) Anti-Harassment policy and establishes procedures for reporting, reviewing, investigating, and resolving allegations of harassment, and taking prompt and appropriate corrective action when necessary; and identifies roles and responsibilities. This SOP does not affect rights under the Equal Employment Opportunity (EEO) complaint process.

§ 2045.1852 Policy:

RD is committed to ensuring a workplace free of all forms of harassment. This includes both EEO related and non-EEO related harassment. This policy applies to RD employees in their working relationship with Federal employees, non-Federal employees and the public. The policy also applies to contractors and individuals employed under other formal agreements with RD. Conduct that may be considered harassing behavior includes, but is not limited to, the following:

- (a) Sexual harassment, which is a particularly egregious form of prohibited harassment and a form of sex discrimination prohibited by law and regulation.
- (b) Any use of derogatory words, phrases, epithets, gestures, pictures, drawings, or cartoons that:
 - (1) reference or target race, color, religion, age, disability, national origin, sex (gender), sexual orientation, genetic information, marital, and/or parental status regardless of the means of delivery (that is, verbal or electronic communication); or
 - (2) intimidates, abuses, offends, or creates a hostile work environment.

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(c) The use of electronic devices or forms of communication (computers, cellular telephones, tablets, internet, email and/or other technological equipment) to harass, demean, or degrade another. This includes the viewing, downloading, storage, or distribution of pornographic or sexually explicit material on such devices whether in the workplace or not, whether on duty or off duty, and whether or not another employee witnesses it.

(d) Retaliation against any individual for reporting matters under this policy, or for an individual's involvement in an inquiry related to such a report. Any individual who believes he or she has been subjected to or witnessed harassment in the workplace is encouraged to directly inform the alleged harasser that the conduct is unwelcome and must stop. Additionally, employees who witness harassment should immediately report it to their manager or supervisor, to another RD management official, or to the RD Anti-Harassment Complaint Reporting Coordinator as provided in paragraph § 2045.1854. Reports of harassment must be addressed in a prompt, impartial and confidential manner, to the extent allowed by law. Only individuals with a need to know, to determine if harassment occurred and to develop recommendations and implement corrective measures, shall be made aware of harassment reports. Any individual who initiates a complaint of harassment or provides information related to a complaint of harassment may do so without fear of retaliation before, during, and after the inquiry or investigative process. Appropriate steps will be taken to investigate any known incidents or reports of harassment and to remedy situations. If a record of inquiry supports a finding that harassing behavior has occurred, the individual proven to be responsible for such behavior may be subject to the appropriate corrective and/or disciplinary actions, including, but not limited to reprimand, suspension, demotion, or removal.

§ 2045.1853 Definitions:

Alleged Harasser: An individual alleged to have engaged in harassing behavior.

Alleged Victim: An individual who believes (or someone on their behalf believes) they have experienced harassment; or who was indirectly, but negatively affected by the alleged harassing behavior towards another.

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Anti-Harassment Complaint Reporting Coordinator: Individual who serves as point of contact for reporting allegations of harassment, when allegations are not reported directly to a management official, or to the Civil Rights Office staff.

Bullying: Non-discriminatory behavior, that does not violate a Federal law, but it is prohibited under Department Regulation 4200-001, "Workplace Violence Prevention and Response Program" the Anti-Harassment Policy statement; this Instruction may constitute misconduct for which disciplinary action may be imposed. Bullying is repeated, intentional, mistreatment of an individual that is driven by a desire to control, impede, or interfere with an individual. Bullying may be direct or indirect, whether verbal, physical or otherwise, by one or more persons against another or others, at the place of work and/or in the course of employment.

Days: This term refers to business days unless otherwise specifically stated.

Discrimination: The differential treatment of an individual or group of people, based on their race, color, religion, age, disability (physical or mental), national origin, sex, genetic information, marital, and/or parental status, political beliefs/affiliation, or public assistance income.

Factfinder: Management official or other individual assigned to conduct the inquiry required to address specific allegation(s) of harassment.

Harassment: Harassment is unwelcome conduct (verbal, physical, psychological, visual, cyber-based) where enduring the offensive conduct becomes a condition of continued employment or the conduct is sufficiently severe or pervasive to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. The harasser can be the alleged victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer. If the harassment violates a protected basis, the alleged victim can also file an EEO complaint.

Management Inquiry: Fact-finding conducted by a manager, supervisor or other management official into alleged employee misconduct that could result in discipline or other corrective action.

Management Official: Immediate supervisor, second level supervisor, or any other management official within the organization.

Retaliation/Reprisal: Taking an action that might deter a reasonable person from participating in activity protected by antidiscrimination and/or whistleblower laws. Protected activity includes complaining about discriminatory or harassing behavior; disclosing/reporting violations of law, rule, or procedure or fraud, waste, or abuse; and participating in discrimination or whistleblower proceedings. A type of discriminatory behavior where individuals are subjected to such actions as firing, being demoted, harassed, or otherwise "retaliated" against due to their having either filed a charge of discrimination, complained to their employer about a discriminating activity, or participated in an employment discrimination proceeding (such as an investigation or lawsuit). Retaliatory actions are not limited to formal personnel actions such as termination, demotion, non-promotion, or non-selection.

Retaliatory actions are broadly defined to include harassing behavior, significant changes to job duties or working conditions, and even threats to take personnel actions.

Sexual Harassment: Sexual harassment is a form of sex discrimination prohibited by law and regulation. Harassment based on gender is prohibited regardless of whether the offensive conduct is sexual in nature or whether the individual engaged in harassment and the individual being harassed are of the same sex. Sexual harassment is unwelcome verbal, visual, or physical conduct of a sexual nature that is severe or pervasive and affects working conditions, or creates a hostile work environment, or culminates in a specific employment action. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct based on sex (whether or not it is sexual in nature) constitutes sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to, or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Sexual harassment can occur at any time and any location, regardless of whether the acts occur on or off the worksite or federal property, and whether they occur during or after work hours. Examples of sexual harassment include, but are not limited to, obscene gestures, sexually offensive text messages or emails, suggestive comments, jokes of a sexual nature, lewd remarks, sexual propositions, innuendoes, threats,

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requests for any type of sexual favor, inappropriate and unwanted physical contact, such as touching, tickling, pinching, patting, brushing up against, hugging, cornering, or kissing. Employees who witness, are aware of, or have a reasonable basis to believe sexual harassment occurred, are required to report it to a management official or the Anti-Harassment Complaint Reporting Coordinator.

§ 2045.1854 Procedures:

RD will address all allegations of harassment in a prompt, impartial, and confidential manner. Only individuals with a need to know to determine if harassment occurred and to develop recommendations and implement corrective measures shall be made aware of harassment reports. RD will not tolerate retaliation against any employee for reporting matters under this policy, or for an employee's involvement in an inquiry or investigation related to such a report.

(a) Reporting an Incident:

(1) Individuals who believe they have been subjected to any form of harassment are encouraged to directly inform the alleged harasser that the conduct is unwelcome and must stop. If an individual is not comfortable in confronting the alleged harasser or they have confronted the alleged harasser and the offensive behavior has not stopped, the individual should immediately report the behavior to a management official, or to the RD Anti-Harassment Complaint Reporting Coordinator by phone at 1-833-242-4524, via email at AHCRC@RD.USDA.GOV;

by mail at:

U.S. Department of Agriculture
Rural Development Business Center
Employee Relations Branch
Attn: Anti-Harassment Complaint Reporting Coordinator
Mail Stop FC-61, Building 105-E, Post G-28
Goodfellow Boulevard, St. Louis, MO 63120;

or at the:

RD Human Resources SharePoint site
<https://rdhr.usda.net/master/SitePages/HRNationalRequest.aspx>

(2) Reports can be made anonymously, either verbally or in writing. However, reports must contain sufficient information for the appropriate management official to begin an inquiry. If a complaint is submitted verbally, the Anti-Harassment Complaint Reporting Coordinator will document in writing the information provided.

(3) Individuals who witness or are aware of any form of harassing conduct toward another individual shall immediately report the behavior to a management official or the RD Anti-Harassment Complaint Reporting Coordinator by phone at 1-833-242-4524; by mail at the address provided at paragraph a above; by email at AHCRC@RD.USDA.GOV; or the RD Human Resources SharePoint site at <https://rdhr.usda.net/master/SitePages/HRNationalRequest.aspx>. Reports can be made anonymously, either verbally or in writing. However, reports must contain sufficient information to enable the appropriate management official to begin an inquiry. If a complaint is submitted verbally, the Anti-Harassment Complaint Reporting Coordinator will document the information provided.

(4) Individuals who believe they have been subjected to unlawful discriminatory harassment or reprisal for harassment-related civil rights activity may also file a complaint of discrimination by contacting an EEO Counselor at 1-800-787-8821 within 45 calendar days of the alleged incident. Failure to do so may result in dismissal of the EEO complaint for untimeliness. Expiration of the 45-calendar day period does not preclude the individual from reporting the incident to an appropriate management official to initiate an inquiry of the alleged incident. RD's Anti-Harassment Policy and Complaint Procedures do not affect an individual's rights under the EEO complaint process. The management inquiry is separate and apart from the EEO complaint process. An individual who reports allegations of harassment in accordance with the RD Anti-Harassment Policy and Complaint Procedures may also file an EEO complaint.

(5) Individuals who believe they have been subjected to harassment that may involve sexual/physical assault and/or sexual violence, including any threat (or perceived threat) of such violence, should first report such allegations to Federal Protective Service personnel or local law enforcement. Individuals should also report these allegations to the appropriate management official. Management officials who receive a report of sexual/physical assault and/or sexual violence (this includes any threat of such incident), must follow the protocols outlined in the Departmental Regulation 4200-001, "Workplace Violence Prevention Program."

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(6) Individuals who believe they have been subjected to harassment that may involve sexual harassment and/or non-violent criminal activity should first report such allegations to the USDA Office of Inspector General. Individuals may contact the USDA Office of Inspector General Hotline:

(i) By phone at (800) 424-9121, (202) 690-1622, or (202) 690-1202 (TDD);

(ii) By mail at:
United States Department of Agriculture
Office of Inspector General
P.O. Box 23399
Washington, DC 20026-3399

(iii) Online at: <https://www.usda.gov/oig/hotline.htm>

(b) Notification Requirements: Any individual reporting a complaint(s) of harassment, of any type, is required to provide the information detailed below.

(1) Contact Information for Reporting Individual:

(i) Full Name

(ii) Position Title

(iii) Telephone number(s)

(iv) Email address

(v) Date reported

(vi) Date Became Aware of allegation (*Complete, if witness, manager, or confidante*)

(vii) Action(s) taken regarding allegation

(2) Management Official's Knowledge of Alleged Harassment: (If management official is different from the individual listed in number 1 above, please complete the information below).

(i) Full Name;

(ii) Position Title;

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- (iii) Telephone number(s);
- (iv) Email address;
- (v) Date individual reported allegation;
- (vi) Date became aware of allegations; and
- (vii) Action(s) taken regarding allegation(s).

(3) Alleged Victim's Contact Information: (If not the reporting individual in § 2045.1854(b)).

- (i) Full Name;
- (ii) Position Title;
- (iii) Telephone number; and
- (iv) Email address.

(4) Alleged Harasser's Contact Information:

- (i) Full Name;
- (ii) Position Title;
- (iii) Telephone number(s); and
- (iv) Email address.

(5) Action Alleged Victim Took to Confront Alleged Harasser:

- (i) Date Action Initiated; and
- (ii) Action Initiated.

(6) Describe Alleged Harassment: (Provide specifics, including date(s), time(s), location(s) of Alleged Harassment).

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(7) Contact Information for Witness(es):

- (i) Full Name;
- (ii) Position Title;
- (iii) Telephone number(s);
- (iv) Email address;
- (v) Date Incidents(s) Witnessed; and
- (vi) Action Initiated After Witnessing Incident.

(c) Inquiry/Investigation Process:

(1) Responding to Allegations of Harassment.

(i) Within two (2) business days of receiving notification of a report of harassment, the RD Anti-Harassment Complaint Reporting Coordinator will refer the allegation(s) and complaint information to the Employee Relations Branch (ERB) servicing Human Resources Specialist for coordination and referral to the appropriate manager for a Fact-Finding Inquiry. Unless otherwise designated, the alleged harasser's manager will serve as the Factfinder during the inquiry process. If a conflict of interest exists, it is the responsibility of the alleged harasser's manager to designate an appropriate Factfinder to conduct an inquiry into the allegations raised. Factfinders shall not be implicated in the report of harassment and shall not be a subordinate of any official involved in the matter being investigated.

(ii) Within two (2) business days of receiving the report of harassment from the RD Anti-Harassment Complaint Reporting Coordinator, the servicing ERB Human Resources Specialist will (1) notify the appropriate management official and others with a need to know of the complaint; and (2) advise the appropriate management official(s) to initiate the inquiry within two (2) business days and prevent any retaliation before, during and after the Fact-Finding process. Interim remedial action(s) should be considered when the alleged victim requests it or when the allegations involve a situation that would be intolerable for a reasonable person.

(iii) The fact-finding process shall commence within two (2) business days of the Factfinder receiving notification of the harassment allegations and shall be completed not later than 10 business days from the date of notification, unless an extension is requested in accordance with these procedures.

(A) The servicing ERB Human Resources Specialist will provide the appropriate management official and other parties who have a "need to know" with information provided in the initial report of alleged harassment.

(B) The fact-finding process shall determine whether the allegation violates the RD Anti-Harassment Policy. The process may consist of multiple areas of inquiry, including conducting interviews, obtaining documentation, reviewing regulatory requirements, etc.; and will be documented by preparing a written report summarizing the findings.

(C) All employees are required to fully cooperate in the process as requested by the Factfinder, to include providing statements, documentation, other relevant information, etc. The Factfinder shall document any individual's refusal to cooperate in the fact-finding process and notify the individual's supervisor or manager of their failure to cooperate. The supervisor/manager shall consult with the servicing ERB Human Resources Specialist for determination of appropriate action.

(D) All information gathered during the fact-finding process shall remain confidential to ensure the privacy of those involved and shall be shared strictly on a "need to know" basis. The maintenance of gathered information and any disclosures of information shall comply with the Privacy Act, 5 U.S.C. 552a.

(E) Factfinders shall consult with the appropriate servicing ERB Human Resources Specialist for assistance in conducting the fact-finding process, and in determining the severity of the alleged misconduct, appropriate administrative action(s) that may be required, and/or for any additional assistance. Factfinders shall submit an HR Service Request using the authorized SharePoint site at <https://rdhr.usda.net/SitePages/Home.aspx>.

§ 2045.1854(c) (1) (iii) (Con.)

NOTE: Factfinders, who are not the alleged harasser's manager, shall not consult directly with the servicing ERB Human Resources Specialist regarding the findings resulting from the inquiry. Rather, the designated Factfinder shall provide his/her report of findings to the alleged harasser's manager, who will consult with the appropriate servicing ERB Human Resources Specialist for any additional assistance required.

(F) If an extension of the fact-finding process is needed, the Factfinder shall request the extension from the servicing ERB Human Resources Specialist with a copy of the request forwarded to the email address designated for Complaint Reporting intake at AHCRRC@RD.USDA.GOV. The written request must include specific justification for the extension. The servicing ERB Human Resources Specialist will provide a response to the request within two business days of receipt. Extensions may be granted on a case-by-case basis.

(iv) Within five (5) business days after completing the fact-finding process, the Factfinder will provide a copy of the final report and all supporting documentation and evidence to the servicing ERB Human Resources Specialist and to the alleged harasser's manager (if the Factfinder is not the manager).

(A) In consultation with the servicing ERB Human Resources Specialist, the alleged harasser's manager will determine what corrective and/or disciplinary action(s), if any, may be required and take necessary action, or determine if referral to the USDA Office of Inspector General is necessary, should the fact-finding process reveal sufficient evidence of harassment that may involve criminal activity.

(B) Should the alleged harasser's manager determine corrective and/or disciplinary action is necessary, the alleged harasser's manager shall consult with the servicing ERB Human Resources Specialist no later than five (5) business days from receipt of the final report.

(v) Within five (5) business days after receiving a copy of the final report and supporting documentation/evidence, the alleged harasser's manager, with assistance from their servicing ERB Human Resources Specialist, shall prepare and issue close-out notifications to the alleged victim and alleged harasser. The notification will state that the allegations were referred to a Factfinder (identified by name, position, organizational location), who has completed the Fact-Finding Inquiry Process.

NOTE: To protect the privacy of all parties involved in the matter, close-out letters will not disclose information about any subsequent administrative/disciplinary action taken, if applicable.

§ 2045.1855 **Responsibility:**

(a) Employees and individuals performing work on behalf of RD shall:

(1) refrain from engaging in harassing conduct and adhere to a standard of conduct that is respectful and courteous to others.

(2) complete all mandatory anti-harassment training.

(3) understand the provisions of these procedures and adhere to the requirements outlined therein.

(4) promptly report incidents of harassment known or witnessed in accordance with the requirements in this procedure. Any employee who believes she or he has been subjected to harassment, or who has witnessed such harassment, shall report such actions to a management official or the Anti-Harassment Complaint Reporting Coordinator.

(5) cooperate with any inquiry/investigation regarding any allegation of harassment. Departmental Regulation 4070-735-001, Employee Responsibilities and Conduct, Subpart B, Section 20 (c), requires employees to participate and cooperate in official administrative inquiries/investigations. Failure to cooperate with an inquiry/investigation under these procedures will not prevent the Agency from addressing an allegation of harassment. However, an employee's failure to cooperate may result in the inquiry/investigation being closed without the non-cooperating employee's input.

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(b) Management Officials shall:

- (1) notify employees of RD's Anti-Harassment Policy and Procedures.
- (2) cooperate and collaborate with the Civil Rights Office and the Office of Human resources to ensure all employees:
 - (i) receive training on the awareness and prevention of harassment.
 - (ii) know the procedures for addressing harassment.
 - (iii) comply with the requirements outlined in this procedure.
- (3) take action to prevent harassment, maintain a work environment free of harassment, and communicate to employees that harassment will not be tolerated.
- (4) upon observing or being made aware of allegations of harassment, handle all notifications in accordance with the instructions outlined in this procedure.
- (5) contact the appropriate servicing ERB Human Resources Specialist for guidance and assistance.
- (6) within two (2) days upon receipt of a harassment allegation, initiate inquiries/investigation into the allegation(s) in accordance with this procedure. Serve as Factfinder, or designate the Factfinder, to conduct inquiries in a prompt, thorough, and impartial manner consistent with the instructions outlined in this procedure. When appropriate, refer allegations of harassment that involving criminal activity to the appropriate party (i.e. local law enforcement, USDA Office of Inspector General, etc.).
- (7) take prompt and effective action to stop harassing behavior immediately. Pending the outcome of the management inquiry, consider interim measures, such as a mutual agreement for telework, detail, or approving requested leave which may separate the alleged harasser(s) from the affected employee(s). If separation of the parties is necessary, affected employee(s) should not be moved (detailed, transferred, or reassigned), unless requested.

- (8) within five (5) business days after receiving final reports, with assistance from their servicing ERB Human Resources Specialist, prepare and issue close-out notifications to the alleged victim and alleged harasser stating the complaint/allegation(s) was referred to a Factfinder (identified by name, position, organizational location), who has completed the Fact-Finding Inquiry Process.
 - (9) coordinate and consult with servicing ERB Human Resources Specialist to hold individuals that are found to have engaged in harassment (EEO and non-EEO related) accountable for their actions by implementing the appropriate corrective action(s), as necessary. Consultation with the servicing ERB Human Resources Specialist shall commence within five (5) business days of receipt of final reports.
 - (10) enforce the Anti-Harassment Policy and Procedures.
 - (11) evaluate subordinate Supervisors and Managers on their performance under the Anti-Harassment Policy.
 - (12) promote management and employee efforts to eliminate harassment.
 - (13) provide periodic notification to employees concerning prohibitions against harassment, methods for reporting incidents, and procedures for filing complaints and grievances.
 - (14) display or make copies of relevant policies and procedures available within the office and on RD's internet and SharePoint sites.
- (c) The Anti-Harassment Program Complaint Reporting Coordinator shall:
- (1) receive allegations of harassment directly from alleged victims and employees who believe they have been confronted with, and/or witnessed such harassment, and from management officials who observe or receive reports of alleged harassment.
 - (2) within two (2) business days of receiving notification of a harassment allegation(s), provide information received to servicing ERB Human Resources Specialist.

§ 2045.1855(c) (Con.)

- (3) maintain records of complaints received and actions taken toward resolution.
 - (4) comply with all the requirements outlined in these procedures.
- (d) Factfinders shall:
- (1) not be implicated in any way in the alleged harassment and shall not be subordinate to any employee named as an alleged offender in the complaint.
 - (2) be objective, impartial, and competent to conduct the fact-finding inquiry.
 - (3) within two (2) business days of receipt of notification of harassment allegations, initiate an inquiry in a prompt and thorough manner.
 - (4) create a plan of inquiry/investigation; conduct interviews and obtain written statements; collect available evidence; and prepare a thorough, impartial, accurate and well-written report summarizing the findings.
 - (5) maintain confidentiality and only share information with other individuals who have a need to know.
 - (6) complete the fact-finding processing within 10 business days in an impartial manner and refrain from making any recommendations for disciplinary action in the final report. Any recommendation(s) for subsequent disciplinary action will be made separately by an appropriate management official after consulting with the servicing ERB Human Resources Specialist.
 - (7) within five (5) business days after completing the inquiry, the Factfinder will prepare a report in accordance with this procedure. The Factfinder will forward a copy of the final report and supporting documentation/evidence to the appropriate manager (if they are not the supervisor/manager of the alleged harasser and servicing ERB Human Resources Specialist).

(e) Servicing ERB Human Resources Specialists shall:

- (1) within two (2) business days of receiving the report of harassment from the RD Anti-Harassment Complaint Reporting Coordinator, refer to report of harassment to the appropriate management officials.
- (2) consult with Factfinders to provide any assistance in conducting the inquiry process, if requested.
- (3) upon receipt, review and assess the Factfinder's final report; make any necessary recommendations to the appropriate management official.
- (4) coordinate and consult with management official(s) to prepare appropriate corrective and/or disciplinary actions, if applicable.
- (5) prior to issuance, review close-out notices prepared by management officials notifying the alleged victim and alleged harasser of the harassment complaint process and outcome of the fact-finding inquiry.

(f) The Director, Civil Rights Office, shall:

- (1) provide technical assistance and support to ensure compliance with RD's Anti-Harassment Policy. Disseminate the Anti-Harassment Policy and Procedures to all Agency employees annually.
- (2) ensure that EEO complaints involving allegations of harassment are referred to the Anti-Harassment Program Complaint Reporting Coordinator for simultaneous processing in accordance with RD's Anti-Harassment Policy and Procedures.
- (3) collaborate with the Director of RD's Human Resources Office to:
 - (i) establish and implement Anti-Harassment policies and procedures for RD.
 - (ii) develop, coordinate, and conduct Anti-Harassment Training for employees, supervisors and managers.

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(g) The Director, Human Resources Office, shall:

(1) provide oversight, technical assistance, and support to ensure compliance with RD's Anti-Harassment Policy.

(2) collaborate with the Director of RD's Civil Rights Office to:

(i) establish and implement Anti-Harassment policies and procedures for RD.

(ii) develop, coordinate, and conduct Anti-Harassment Training for employees, supervisors and managers.

(iii) ensure responsibilities of ERB Human Resources Specialists are followed.

(h) The Agency Head shall ensure the effective implementation of RD's Anti-Harassment Policy and Procedures.

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