



**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION**  
National Policy

**ORDER  
1400.8A**

Effective Date  
05/16/12

**SUBJ: Federal Aviation Administration (FAA) Equal Employment Opportunity (EEO) Program**

This order describes the requirements for the FAA EEO Program and affirms the FAA commitment to preventing and eliminating discrimination on the basis of race, color, religion, sex (including pregnancy and gender identity), genetic information, national origin, age, disability (mental or physical), sexual orientation, or prior participation in a protected EEO activity (reprisal or retaliation).



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## Chapter 1. General Information

**1. Purpose of this Order.** This order describes the requirements for the FAA Equal Employment Opportunity (EEO) Program and affirms the FAA commitment to preventing and eliminating discrimination on the basis of race, color, religion, sex (including pregnancy and gender identity), genetic information, national origin, age, disability (mental or physical), sexual orientation, or prior participation in a protected EEO activity (reprisal or retaliation).

**2. Audience.** This order applies to all FAA employees, former employees, and applicants. The procedures set out in this order are intended to provide notice of the FAA EEO Program generally, as well as a description of the procedures associated with the EEO complaint process, that may be pursued by individual employees or applicants for employment. For more information on reporting and responding to allegations of harassment, consult: FAA Order 1110.125A: Accountability Board and/or contact the Office of the Accountability Board in the Office of Human Resource Management.

**3. Where can I find this order?** You can find this Order on the MyFAA Employee Web site: [https://employees.faa.gov/tools\\_resources/orders\\_notices/](https://employees.faa.gov/tools_resources/orders_notices/). This Order is available to the public at [http://www.faa.gov/regulations\\_policies/orders\\_notices/](http://www.faa.gov/regulations_policies/orders_notices/).

**4. Cancellation.** FAA Order 1400.8, dated August 31, 2006 is canceled.

**5. Explanation of Policy Changes.** This order reflects extensive evolution in law, regulation, and Equal Employment Opportunity Commission (EEOC) guidance since the original order was signed in 1979. The FAA EEO Program incorporates the requirements from the EEOC Management Directives (MD)-110 and MD-715, as well as the Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (No FEAR). This order also includes requirements from relevant Executive Orders (EOs), such as EO 13087 that broadens the Executive Branch EEO Complaint process to include discrimination based on sexual orientation. Other legal authorities relevant to this order may be found in Appendix B.

## **Chapter 2. Roles and Responsibilities**

### **1. FAA Administrator.**

- a.** Mandates compliance with the law by all employees.
- b.** Demonstrates commitment to EEO throughout the organization for all employees and applicants for employment.
- c.** Takes such measures as may be necessary to incorporate the principles of EEO into the FAA organizational structure.
- d.** Issues a written policy statement expressing his or her commitment to EEO and a workplace free of discrimination, harassment and reprisal or retaliation for prior participation in a protected EEO activity, at the beginning of his or her tenure, thereafter on an annual basis, and distributes it to all employees.
- e.** Maintains a reporting structure to provide the Assistant Administrator for Civil Rights, with regular access to himself or herself and other senior management officials for reporting on the effectiveness, efficiency and compliance of the FAA EEO Program with EEOC guidance and directives.
- f.** Establishes performance expectations for all FAA executives and managers with regard to the FAA EEO Program.
- g.** Appoints a senior official as the FAA Dispute Resolution Specialist charged with implementing a program to provide significant opportunities for Alternative Dispute Resolution (ADR) for the full range of employment-related disputes.

### **2. Assistant Administrator for Civil Rights and FAA Diversity Advocate (ACR).**

- a.** Plans, directs and implements a comprehensive EEO program, including EEO plans, procedures, reports and other policy matters.
- b.** Ensures that laws and FAA policy related to EEO are available to all FAA employees and applicants.
- c.** Evaluates regularly the sufficiency of the total FAA EEO Program. Reports to the Administrator with recommendations of improvements or corrections, as needed.
- d.** Makes changes in programs and procedures, as authorized by the Administrator, designed to eliminate any discriminatory practices that may exist and to improve the FAA EEO Program.
- e.** Tracks each finding of discrimination and reports trends, issues and concerns to FAA leadership for appropriate action.

**f.** Attracts, develops, and retains EEO staff with the strategic competencies necessary to accomplish the FAA EEO mission, and interface with FAA officials, managers, and employees.

**g.** Issues the initial record retention and preservation letter to the responsible management official(s) (RMO) in the Line of Business or Staff Office (LOB/SO), against which the pre-complaint is filed, notifying them to locate, retain and preserve all potentially relevant information (in all forms, including electronically stored information) regarding the pre-complaint allegations. The initial record retention and preservation letter will also be issued to the EEO LOB/SO point-of-contact assigned to receive such letter for each complaint filed under the LOB/SO.

**h.** Administers the FAA informal EEO complaint processes in conformance with 29 CFR part 1614.105, and provides timely EEO counseling to include: informing employees of the FAA EEO policy and process and ensuring that sufficient numbers of EEO counselors are trained and available to employees, former employees, and applicants who consult with them.

**i.** Develops and provides managers and employees with appropriate EEO training and other resources on EEO policy and procedures in coordination with the Office of the Chief Counsel (AGC). Coordinates with the Office of Human Resource Management (AHR) on appropriate integration of EEO topics in corporately sponsored management training.

**j.** Tracks and coordinates with AGC and AHR as appropriate, advises managers, and employees on the processing of reasonable accommodation requests for employees and applicants to ensure appropriate processing and compliance with disability law and policy.

**k.** Coordinates with AHR on all FAA or LOB/SO-wide human resource policies, practices and procedures consistent with EEOC Management Directive 715. Specifically, coordination must occur during agency deliberations regarding reorganizations, re-alignments, recruitment strategies, vacancy projections, succession planning, training/career development opportunities, and other workforce changes prior to those changes being implemented. These policies, procedures and practices also will be simultaneously coordinated with AGC. Coordination must allow sufficient time for substantive review and comments.

**l.** Works collaboratively with LOBs/SOs during pre-decisional deliberations related to LOB/SO-wide critical workplace decisions and policy development (e.g. recruitment strategies, vacancy projections, succession planning, and training/career development opportunities) to ensure that EEO concerns are fully integrated into the decision-making process. In addition, will review drafts of these LOB/SO-wide organizational changes submitted by LOB/SO for formal coordination and return comments in time for scheduled implementation, unless the complexity and scope of the draft policy requires additional time for review.

**m.** Ensures that all ACR staff members report allegations of harassment of which they become aware, either through an EEO pre-complaint or inquiry, to the Accountability Board within 2 business days from the date the alleged harassment is originally reported, pursuant to Paragraph (a) (1) of FAA Order 1110.125A: Accountability Board.

**3. Chief Counsel (AGC).** Provides legal advice on policies, procedures and practices that impact internal and external EEO programs to ensure compliance with applicable laws, represents the FAA in all phases of administrative or court actions; provides advice about possible EEO legal implications concerning personnel actions; and reviews all settlement agreements for legal sufficiency.

**4. Assistant Administrator for Human Resource Management (AHR).**

**a.** Maintains the FAA automated system that collects and maintains information on the race, sex, national origin, and disability (mental or physical) status of FAA employees as reported. See 29 C.F.R. § 1614.601 for further guidance.

**b.** Maintains the FAA automated system that tracks applicant flow data by race, sex, national origin, and disability (mental or physical) status and the disposition of FAA applications.

**c.** Reviews, in coordination with AGC and ACR, all selection procedures to ensure compliance with the Uniform Guidelines on Employee Selection Procedures, 41 CFR Part 60-3.

**d.** Reviews barrier analyses regarding management and personnel policies, procedures and practices to consider whether there are hidden impediments to equal employment opportunity for any group(s) of employees or applicants.

**e.** Submits all FAA/Agency-wide human resource policies, practices and procedures to ACR for coordination. Specifically, submission occurs during agency deliberations prior to final decision, in conformance with EEOC MD-715. Submissions will be made regarding the policies, processes and procedures related to construction of data systems containing race, sex, genetic information, national origin and disability (mental or physical) information about employees and applicants, and other workforce changes, e.g.; reductions in force, recruitment strategies, succession planning, training/career development opportunities, human capital plans, telework, performance management, awards, and merit promotion. These policies, procedures and practices also will be coordinated with AGC for review.

**f.** Provides timely information to EEO Investigators or other EEO staff.

**g.** Upon the notification from the LOB/SO of the filing of an informal EEO complaint, takes all necessary action(s) to locate, preserve and retain all human resource policies, practices, procedures, disciplinary/adverse action files or training records, competitive hiring files and merit promotion plan files (including electronic documents and information) related to the allegations in the complaint. Preserve these files and documents, until advised by ACR or AGC that these files are no longer needed.

**h.** Reviews all settlement agreements that involve any type of personnel action for compliance with human resource policies.

**i.** Ensures that genetic information about employees that is inadvertently obtained, either orally or in writing, be kept confidential. Genetic information may be safeguarded in a manner similar to that used for Privacy Act information.

**5. Associate and Assistant Administrators/Air Traffic Organization Chief Operating Officer.**

- a.** Communicate support of all EEO laws and policies throughout the organization.
- b.** Lead by example and mandate employee compliance with all EEO laws.
- c.** Work collaboratively with ACR and AGC during pre-decisional deliberations related to LOB/SO-wide critical workplace decisions and policy development (e.g. recruitment strategies, vacancy projections, succession planning, and training/career development opportunities) to ensure that EEO concerns are fully integrated into the decision-making process. In addition, LOBs/SOs will submit drafts of these respective LOB/SO-wide organizational changes to ACR and AGC for review and formal coordination at least three weeks prior to implementation, unless the complexity and scope of the draft policy requires additional time for review.
- d.** Identify a point of contact in the LOB/SO for EEO matters, who, among other duties, will be the recipient of the record retention and preservation letter issued by ACR for each complaint filed against the respective LOB/SO (known as the LOB/SO EEO contact hereinafter).
- e.** Support the FAA EEO Program through allocation of resources to participate in community outreach and recruitment programs, when such participation will not unduly impede the operational mission of the office.
- f.** Ensure that managers have the knowledge and skills to successfully discharge their EEO duties and responsibilities, including but not limited to dealing with inappropriate conduct in the work place, determining disciplinary actions, handling requests for reasonable accommodation and taking performance based actions.
- g.** Review, at least annually, findings of discrimination, in consultation with ACR, AHR, and AGC, to ascertain trends and/or systemic issues and appropriate corrective actions.
- h.** Ensure that there are systems and/or procedures in place for prompt compliance with settlement agreements and final agency decisions or orders issued by the EEOC, and EEO-related cases from the Merit Systems Protection Board (MSPB), labor arbitrators, the Federal Labor Relations Authority, federal courts, or other authorized forum.
- i.** Allocate sufficient resources to create and/or maintain Title VII and Rehabilitation Act programs, in conjunction with ACR, that identify and eliminate any potential EEO barriers that impair the ability of individuals to compete in the workplace because of non-merit factors.
- j.** Correct, address, and promptly resolve any and all unlawful discrimination in the workplace.
- k.** Direct all employees, including managers, to cooperate with EEO counselors, investigators or other EEO staff in a timely manner.

**l.** Direct all employees, including managers, to allocate personnel, time and other resources to support AGC in representing the FAA in EEO administrative and court litigation.

## **6. Managers.**

**a.** Be familiar with the Prohibited Personnel Practices, as described in paragraph VIII of the Personnel Management System (PMS), in order to avoid committing unlawful acts. Uphold and apply merit principles and make clear that employment decisions cannot be made based on a person's race, color, religion, sex (including pregnancy and gender identity), genetic information, national origin, age, disability (mental or physical), sexual orientation, or prior participation in a protected EEO activity (reprisal or retaliation).

**b.** Correct and address promptly any and all unlawful discrimination and inappropriate conduct in the workplace. The procedures outlined in this order are separate from those of the Accountability Board, as it is a separate and distinct program from the FAA EEO Program. The procedures set out for the FAA EEO Program in this order are intended to remedy or redress the interest of individual employees. However, the Accountability Board program and procedures ensure that management's responses to acts of harassment and misconduct are investigated and appropriate corrective action taken. Employees may file EEO discrimination complaints to remedy or redress individual interests, even when an Accountability Board complaint is filed.

**c.** Conduct an appropriate inquiry into any allegation of discrimination or harassment in a timely manner and take immediate corrective actions, including disciplinary actions, when appropriate. Report any allegations of harassment to the Accountability Board within 2 business days from the date the alleged harassment is originally reported, pursuant to Paragraph (a) (1) of FAA Order 1110.125A: Accountability Board.

**d.** Notify the appropriate management official of any discrimination or any potentially inappropriate conduct that may violate EEO laws, regulations or policies of which he or she becomes aware. The appropriate management official is the management official who has the authority to take action to correct or remedy any unlawful discrimination, and is usually in the LOB/SO in which the alleged EEO violation occurred.

**e.** Participate, as appropriate, in the ADR process, when it is offered.

**f.** Seek advice from and coordinate with ACR, AHR, and AGC, as appropriate, if there are questions about compliance with EEO laws or merit principles. Managers can consult with ACR, AHR, and AGC about requests for reasonable accommodations. Managers may also consult on how to respond to allegations of harassment by reviewing FAA Order 1110.125A: Accountability Board and/or contacting the Accountability Board.

**g.** Support the FAA EEO Program through allocation of resources to participate in community outreach and recruitment programs, when such participation will not unduly impede the operational mission of the LOB/SO.

**h.** Ensure all employees complete required EEO training.

**i.** Ensure employees have access to all required policy statements posted in their facilities and on the ACR website.

**j.** Allocate personnel, time and other resources to support AGC in representing the FAA in EEO administrative and court litigation.

**k.** Notify AHR and other offices as appropriate when you become aware that you have been named as the Responsible Management Official (RMO) in an informal EEO pre-complaint to ensure information is appropriately preserved and retained.

**l.** Take all necessary action(s), upon notification of the filing of an informal EEO complaint, to locate, preserve and retain all potentially relevant information (such as human resource policies, practices, procedures, disciplinary/adverse action files or training records, competitive hiring files, merit promotion plan files, and all other emails and documents (including electronic documents and information) related to the allegations in the complaint. Preserve potentially relevant information until advised by ACR or AGC that these files are no longer needed.

**m.** Ensure that genetic information about employees that is inadvertently obtained, either orally or in writing, be kept confidential.

**n.** Report any known or suspected EEO violation to his/her immediate manager or to another management official. If the immediate frontline manager is involved in the alleged EEO violation, use any FAA approved forum for reporting such allegations. Please see Chapter 4, section 1, Complaint Process for more information on reporting EEO violations

## **7. Employees.**

**a.** Must comply with all applicable EEO laws and policies.

**b.** Must not discriminate against, engage in inappropriate behavior or harass another individual (e.g. applicant, employee, contractor or customer, etc.) on the basis of race, color, religion, sex (including pregnancy and gender identity), genetic information, national origin, age, disability (mental or physical), sexual orientation, or prior participation in protected EEO activity (reprisal or retaliation).

**c.** Report any known or suspected EEO violation to his/her immediate frontline manager or to another management official. If the immediate frontline manager is involved in the alleged EEO violation, use any FAA approved forum for reporting such allegations. Please see Chapter 4, section 1, Complaint Process for more information on reporting EEO violations.

## Chapter 3. Program Information

**1. Complaint Program.** If an FAA employee or applicant for FAA employment feels that he or she has been discriminated against and wants to initiate the pre-complaint process, they may contact the FAA Office of Civil Rights (ACR) by calling the National EEO Intake Unit at 1-888-954-8688 (1-888 WK IT OUT) or they may contact any member of the ACR staff. They may also initiate the pre-complaint process through FAA EEO eFile at <https://eeoefile.faa.gov>. Additional information on the informal and formal EEO complaint processes may be found in Chapter 4 of this order. When an allegation or complaint of harassment or misconduct within the scope of the Accountability Board is made to the EEO counselor or the Civil Rights staff, they will report the allegation to the Accountability Board staff within 2 business days from the time the information is reported to them. If anonymity is requested by the aggrieved party, the facts of the allegation(s) will be referred to the Accountability Board in a manner that does not reveal the aggrieved party's name or sex.

**2. Reasonable Accommodation Program.** Reasonable accommodation requests must be processed in accordance with DOT Order 1011.1 and FAA Order 1400.12 and entered into the Reasonable Accommodation System maintained by ACR. Requests must be processed within the timeframe specified in the DOT Order, which is 25 business days. However, the timeframe may be put "on hold" if management is waiting for information from the employee requesting the accommodation, waiting for the arrival of equipment, or other circumstances arise that are beyond the control of the manager are prolonging the process. Further information on reasonable accommodation requests may be obtained from the local ACR or the National People with Disabilities (PWD) Program Manager or on the FAA internal website under ACR.

**3. Targeted National Outreach Program for Diversity and Inclusion.** The Office of Civil Rights National Outreach Program for Diversity and Inclusion (NOPDI) was established to conduct outreach efforts to targeted communities where the Agency has lower than expected participation rates. Targeted groups include, but are not limited to, minority groups such as: Asian & Pacific Americans, Native American/Alaska Natives, African Americans, Hispanic/Latinos, people with disabilities, and women. Targeted outreach provides these minority groups the opportunity to learn about the FAA and employment opportunities through electronic vacancy notifications, career fairs, video teleconferences, minority professional conferences, and informational sessions. The NOPDI conducts and coordinates outreach activities to inform the public, Minority Serving Institutions, colleges, universities, public schools, employees, employee associations, and community and professional organizations about career and student opportunities in the FAA.

**4. Special Emphasis Programs.** Special Emphasis Programs (SEPs) were established to assist federal government Agencies to carry out their equal employment opportunity initiatives. They assist the agency in ensuring that equal opportunity is present in all aspects of employment, eliminating discriminatory practices, and ensuring targeted groups are represented throughout the workforce. At the FAA, SEPs are an integral part of achieving a Model Equal Employment Opportunity Program through strategic outreach efforts and collaboration.

The Office of Civil Rights is responsible for the management of three national SEPs required by Presidential Executive Orders: Federal Women's Program (FWP); Hispanic Employment Program (HEP); and PWD.

**5. Model EEO Program.** FAA works to ensure that we comply with policies, practices, and procedures in a discrimination free manner in the federal workplace, regardless of race, color, religion, sex (including pregnancy and gender identity), genetic information, national origin, age, disability (mental or physical), or reprisal/retaliation for engaging in prior protected EEO activity. The Model EEO Program governed by Management Directive 715 requires that Federal Agencies are in full compliance with EEO statutes and EEOC regulations, policy guidance, and other written instructions. This may include, among other actions, barrier analyses and on-site assessments to identify and eliminate obstacles to employment.

**6. EEO Training Institute (ETI).** The ETI is the dedicated ACR resource for EEO training. ETI training emphasizes the importance of creating a culture that adheres to the FAA EEO policies and fosters respect in the workplace. ETI provides EEO training to managers and employees. The following is a partial list of the training courses offered by ETI: Manager's Responsibilities; Regarding the EEO Complaint Program and ADR ; Title VII Laws and the Complaint Process; Management Directive MD-715; Model EEO Leadership Training; Employing, Retaining and Advancing People with Targeted Disabilities at the FAA; and Reasonable Accommodations.

## Chapter 4. General EEO Complaint Program Information

### 1. Informal EEO Pre-Complaint.

**a. Eligibility.** An FAA employee, former employee or applicant for FAA employment who believes he or she has been discriminated against on the basis of race, color, religion, sex (including pregnancy and gender identity), genetic information, national origin, age, disability (mental or physical), sexual orientation or reprisal for prior participation in protected equal employment opportunity (EEO) activities (reprisal or retaliation) must contact the FAA Office of Civil Rights (ACR) within 45 calendar days of the alleged incident or, in the case of a personnel action, within 45 calendar days of the effective date of the action, in order to file a pre-complaint.

**b. Initiating an Informal Pre-Complaint.** If an FAA employee, former employee or applicant for FAA employment feels he or she has been discriminated against and wants to initiate the pre-complaint process, they may contact the ACR by calling the National EEO Intake Unit at 1-888-954-8688 (1-888 WK IT OUT) or they may contact any member of the ACR staff. They may also initiate the pre-complaint process through FAA EEO eFile at <https://eeoefile.faa.gov>.

**c. Rights and Responsibilities.** The EEO counselor must advise the aggrieved person, in writing, of their rights and responsibilities in the EEO process. These include the right to request a hearing at the EEOC after a complaint has been accepted for investigation and the investigation has been completed, or to request a Department of Transportation (DOT) Final Agency Decision (FAD) after investigation of allegations in accordance with appropriate rules and regulations.

**d. Allegations of Harassment.** Pursuant to Paragraph 15(a)(1) of FAA Order 1110.125A: Accountability Board, EEO counselors and ACR staff members are required to report allegations of harassment to the Accountability Board within 2 business days from the date that the alleged harassment is originally reported. If anonymity is requested by the aggrieved party, the facts of the allegation(s) will be referred to the Accountability Board in a manner that does not reveal the aggrieved party's name or sex.

**e. Method of Processing.** The FAA EEO National Intake Unit, ADR Specialist and EEO counselor shall advise the aggrieved person of the opportunity to resolve their pre-complaint through traditional counseling or through ADR.

(1) Traditional EEO Counseling. If the aggrieved person chooses traditional counseling, the counselor shall conduct a limited inquiry into the pre-complaint allegations and seek resolution at the lowest possible level based on the requested remedies of the aggrieved person. If the pre-complaint is not resolved, the counselor shall conduct the final interview no later than the 30th calendar day after initial contact unless the aggrieved person requests an extension. During the final interview, the counselor shall advise the aggrieved person of his or her right to file a formal complaint of discrimination, and issue the Notice of Right to File a Formal Complaint.

(2) ADR. If the aggrieved person chooses ADR and the Line of Business or Staff Office (LOB/SO) also agrees to ADR, the processing time for the pre-complaint is extended to 90 calendar days from the initial contact date. If there is no resolution by the 90th calendar day, the counselor

shall conduct the final interview and issue the Notice of Right to File a Formal Complaint to the aggrieved person. The ACR uses mediation as its primary form of ADR. Additional information on the FAA EEO ADR Program may be found in FAA Order 1400.10.

**f. Notice of Final Interview and Notice of Right to File a Formal Complaint.** The Notice of Final Interview (NOFI) informs the aggrieved person that the informal EEO complaint process is closed. The Notice of Right to File a Formal Complaint informs the aggrieved person of his or her right to file a formal complaint with the DOT Departmental Office of Civil Rights (DOCR). The aggrieved person will be provided with the Notice of Final Interview and the Notice of Right to File a Formal Complaint no later than the last day of the counseling period (30th day if traditional counseling, 90th day if ADR is accepted by both parties). The notice will inform the aggrieved person that if they would like to initiate a formal complaint, they must file the complaint within 15 calendar days of receipt of the notice.

**g. Counselor's Report.** At the end of the counseling period, if there is no resolution, the counselor must prepare a written counselor's report pursuant to 29 CFR 1614.105. The report will contain relevant information about the aggrieved person, and the jurisdiction, claims, bases, and requested remedies of the complaint. The counselor's report will also include pertinent documents collected during the counseling, specific information bearing on timelines of the counseling and an indication as to the manner, traditional or ADR, of attempted resolution. The original counselor's report will be forwarded to the DOCR office, if the aggrieved person files a formal complaint. If the complaint is filed formally, a copy of the report is forwarded to the aggrieved person, or their designated representative. Another copy of the report is retained by ACR for the time period outlined by Record Retention guidelines. Additional information on EEO counseling may be found in EEOC Management Directive 110 (MD-110).

## **2. Formal EEO Complaint.**

**a. Formal Filing.** In order to file a formal complaint of discrimination, the complainant or the complainant's designated representative must fill out and submit the Individual Complaint of Employment Discrimination with the Department of Transportation Form. The form must include a signed statement of complaint explaining the claim(s), action(s) or practice(s) that form the basis(es) of the complaint to the DOCR. The complaint must be received by the DOCR within 15 calendar days of the complainant's receipt of the Notice of Right to File a Formal Complaint. The complaint must contain the telephone number and address of the complainant or complainant's representative for future contact.

**b. Acceptance or Dismissal of Complaint.** The DOCR acknowledges receipt of the complaint, and then determines whether to accept or dismiss or partially dismiss the complaint. The complainant is sent a notice of acceptance or dismissal. If the complaint is dismissed, the complainant may appeal this decision to the EEOC Office of Federal Operations (OFO) within 30 calendar days of receipt of the notice of dismissal.

**c. Investigation.** If the complaint is accepted, the DOCR is required to conduct and complete an impartial and appropriate investigation of the complaint within 180 calendar days of the filing of the

formal complaint, unless the complainant and the respondent agency both agree to voluntarily extend the time period for not more than an additional 90 days.

**d. Amendments.** If a complaint is accepted, the complainant may amend the complaint at any time prior to the conclusion of the investigation to include additional claims that are like or related to those in the complaint. The complainant will need to contact DOCR for specific guidelines. The DOCR will issue a notice of acceptance or dismissal of the proposed amendments.

**e. Report of Investigation (ROI).** At the conclusion of the investigation, the investigator compiles the ROI, which must be approved by the DOCR. Once the ROI is approved, a copy is sent to the ACR and another copy is sent to the complainant. Within 30 calendar days of receipt of the ROI, the complainant has the right to request a hearing in front of an EEOC administrative judge (AJ) at the EEOC or request an immediate FAD from the DOCR where the complaint was filed. If the investigation is not completed in 180 calendar days, the complainant may still request a hearing by submitting a written request directly to the EEOC.

**3. Confidentiality.** All FAA employees are cautioned that information related to EEO allegations compiled during the informal pre-complaint counseling and the formal complaint/ investigative/ hearing/ appeal stages of the EEO process is part of a Privacy Act system of records. As such, use of the information is restricted to those employees having a need to know the information in the performance of their official duties. AGC is available to provide advice on Privacy Act issues. Employees who violate the Privacy Act are subject to discipline and civil and criminal penalties.

**4. Representation.** According to 29 CFR 1614.605, at any stage in the processing of a complaint, including the counseling stage, the aggrieved person shall have the right to be accompanied, represented, and advised by a representative of their choice. However, managers and attorneys employed by AGC are precluded from serving as employee representatives. The aggrieved person and the designated representative must sign the Designation of Representative form for the designation to occur. The aggrieved person determines the extent of the duties of the representative. Those employees under collective bargaining agreements (CBA) should reference their CBA or contact their union representative to determine their employee rights for representation.

## **5. Official Time.**

**a.** An FAA employee is only entitled to official time in the EEO administrative process if s/he is the complainant, or a representative in a case. Official time is limited to (1) preparing the complaint, and (2) responding to FAA, EEOC or DOCR requests for information. Responding to FAA and EEOC requests for information includes authorized or required appearances during the investigation, depositions, settlement or hearing related to the complaint being administratively processed before the EEOC. There is no entitlement to "time worked on a case," unless the work is to prepare the complaint or respond to FAA and EEOC requests for information. Witnesses for federal EEO cases, who are Federal employees, regardless of their tour of duty and regardless of whether they are employed by the respondent agency or some other Federal agency, shall be in a duty status when their presence is authorized or required by the EEOC or agency officials in connection with a complaint. The official time explained here is in the context of EEO complaints only and is different

from “official time” specified under bargaining unit agreements and the Federal Labor-Management Relations Statute. For more information on representation and/or official time, please see 29 CFR §1614.605.

**b.** To receive official time during the administrative EEO process, an employee must request the time from his/her manager. As part of that request, the manager is entitled to know how much time is being requested and for which specific EEO activities the time is being requested. While time at meetings or hearings spent with FAA officials or EEOC AJ is automatically deemed reasonable, there are several factors that managers must consider when evaluating the reasonableness of any request for official time. Such factors are: 1) the nature and complexity of the case in relation to the time needed to prepare the complaint or respond to FAA/EEOC requests for information; 2) the nature of the position; 3) the relationship of the position to the FAA mission/FAA need to have the employee perform the duties; and 4) the degree of hardship upon the mission through the absence. Underlying all of these considerations is that large amounts of official time are not envisioned. Instead, reasonable time is defined in hours, not days, weeks or months.

**c.** Managers are not required to change work schedules or incur overtime wages in order for an employee to use a reasonable amount of official time, if otherwise on duty. In fact, there is no entitlement to official time outside of duty hours.

**d.** A determination regarding the approval or disapproval of reasonable official time is the product of an interactive process. The use of official time is not permitted unless the manager has pre-approved it. A manager must respond in writing to requests for official time and must set forth the reasons for any complete or partial denial of the request.

**e.** There is no legal obligation to provide official time when an EEO case is in district court.

**f.** Prior to issuance of such a written response to a request for official time, managers are encouraged to consult their local AGC representative for assistance in applying this general guidance to their specific factual situation.

**6. Compliance.** A report of compliance is required to show proof of the completed actions outlined/ordered in a FAD, EEOC Report of Findings and Recommendations, EEOC OFO Decision or Order, settlement agreement, or resolution agreement. The report shall describe the action(s) ordered/outlined to be completed by the FAA; the action(s) taken in response and the date of their completion; and any supporting documents shall be included which evidence the completion of the action(s) ordered/outlined. The compliance report for findings of discrimination must be provided in memo format with attachments and signed by the head of the LOB/SO or his/her designee at the executive level, to which the complaint is assigned. In the ATO, the Vice President for the ATO unit to which the complaint is assigned, or his/her designee, signs the compliance report for findings. Compliance reports for resolution or settlement agreements must also be provided and signed by the head of the LOB/SO, or his designee at the executive level, to which the complaint is assigned. Completed compliance reports for findings must be sent to ACR office at Headquarters. Completed compliance reports for resolution or settlement agreements must be sent to the servicing ACR office.

**7. Judgment Fund.** The Judgment Fund applies only to cases filed in federal courts. If the Judgment Fund is used to resolve a judicial matter, the FAA is required to fully reimburse the Judgment Fund, or agree to an appropriate payment schedule, within 45 calendar days of receipt of the payment request from DOT. The Office of Financial Management (ABA), AGC, ACR and the involved LOB/SO shall work together to ensure the reimbursement occurs, or appropriate payment arrangements are made in a timely manner.

**8. Costs of EEO Complaints.** The FAA organization where the alleged discrimination occurred (the organization of the RMO) is responsible for paying costs associated with the administrative and court complaints. These costs may include but are not limited to:

a. Costs of travel and per diem for the EEO counselor to perform counseling or the EEO mediator to perform mediation during the complaint process.

b. Costs for any special needs for an aggrieved person or complainant with a disability (mental or physical), e.g., interpreter, equipment or other services during any phase of the EEO complaint process.

c. Costs for a contract EEO counselor or mediator, if appropriate.

d. Costs for discovery including court reporting services, transcripts, expert witnesses, demonstrative exhibits, electronic discovery, and costs of travel for FAA counsel, management and witnesses during the formal complaint process.

e. Monetary payments associated with any resolution, settlement or judgment, (e.g., back pay and attorney's fees).

f. Official time granted for an aggrieved person, a complainant, their representative, and/or those involved in meeting, briefings or discussion involving an EEO complaint. General guidance about the granting or denial of official time is contained in the definitions section of this document. For more information, you may also refer to 29 CFR 1614.605. When granting or denying official time, you are encouraged to contact your servicing AGC office.

**9. EEO Object Classification Codes.** One of the major reporting elements of the Notification and Federal Employees Anti-Discrimination and Retaliation Act of 2002 (No FEAR) annual report is to identify money that the FAA reimburses the Judgment Fund when there is an EEO settlement agreement or a finding of discrimination against the FAA, including attorney's fees and costs, as a result of a court decision. The FAA also has an interest in tracking the financial impact of EEO settlements and findings of discrimination not associated with a court decision. In coordination with ABA, object classification codes were established to identify the specific categories of funds paid for EEO cases. The object classification codes for EEO related matters will be entered into the accounting system by the LOB or SO, as follows:

a. EEO Reimbursement of Judgment Fund including attorney's fees and other fees resulting from a court decision or court settlement agreement entered into in a case pending in federal court have the object classification code of 42071.

b. EEO Settlements Except Judgment Fund such as funds associated with resolution or settlement agreements, at any stage of the administrative EEO complaint process, except court decisions or court settlement agreement entered into in a case pending in federal court have the object classification code of 42072.

c. EEO Findings of Discrimination Except Judgment Fund including funds associated with findings of discrimination issued by DOCR, EEOC, MSPB or an arbitrator, except court decisions, have the object classification code of 42073.

## **10. EEO Settlement Agreements.**

a. All settlement agreements resolving EEO allegations must be in writing.

b. The management official authorized to settle the allegation(s) must coordinate with the servicing AGC and AHR offices prior to parties signing settlement agreements at any stage in the EEO process. Also, they must consult with those offices before discussing possible settlement terms with a complainant/appellant when the allegations are being settled at the formal stage of the EEO process or before the Merit Systems Protection Board (MSPB).

c. The management official authorized to settle the allegations in an informal EEO complaint must coordinate the draft written settlement agreements with the ACR before they are signed.

d. ACR will be responsible for coordinating the written agreements with the servicing AGC and AHR offices before the agreement is signed. The agreements will be signed and the responsible ACR office will send a copy of the agreement to the servicing DOT DOCR office within 2 business days of signing. The ACR will also provide one copy each to the aggrieved person/complainant and the management official signing the agreement. ACR also keeps a copy of the signed agreement for their records. Employees and management officials must comply with the terms of a signed EEO settlement agreement within the specified time frames.

e. The management signatory must send a compliance report, in conformance with Chapter 4 Paragraph 6-Compliance, to the servicing ACR no later than 10 business days from the completion of the last action. The management signatory must consult with the local ACR in preparing the compliance report for the EEO settlement agreement. Failure to comply with the terms of a signed EEO settlement agreement may result in disciplinary action.

**11. Withdrawal of Complaint.** A complainant may withdraw his/her complaint at any time. DOCR will request that the complainant sign a form or letter stating that the complaint is being withdrawn voluntarily before closing the complaint, except when the complaint is being withdrawn as part of a settlement agreement or when the complaint is being withdrawn during the hearing process. The complaint is withdrawn with prejudice, meaning that the complainant may not file a subsequent complaint on the same matter. However, the complainant is not precluded from exercising his/her right to file a timely complaint on another claim or on the recurrence of the event subject to withdrawal. If the complaint is being withdrawn as part of a settlement agreement, an executed copy,

with signature, of the settlement agreement must be provided to the DOCR before the complaint can be closed.

**12. Record/Information Retention.** Every FAA management official or office has responsibility to ensure that all potentially relevant information related to an EEO pre-complaint, formal complaint, judicial action, MSPB appeal, or Guaranteed Fair Treatment grievances or grievances filed under a negotiated grievance procedure is retained. If there are any questions about record/information retention, management officials should contact AGC for advice.

a. Within 2 business days of an informal or pre-complaint being filed, ACR will notify the RMO and the respective LOB/SO EEO point of contact (POC) in the LOB/SO against which the allegation is made by sending them a record retention and preservation letter. The letter will remind the LOB/SO to locate, preserve and retain potentially relevant information associated with the allegations in the pre-complaint. The information to be retained may include the selection justifications, evaluation matrix, merit promotion plan files, interview notes (including interview notes of individual panel members), interview questions, policies and procedures, performance evaluations, nominations for awards, time and attendance records, leave records, disciplinary/adverse action files, electronic records, electronic messages (emails) or any other record related to the allegations being challenged. All electronic information is to be retained and preserved in a manner that does not alter the electronic formatting of documents, (i.e., native format), at the time that the notice of retention and preservation is issued.

b. The RMO, in consultation with the LOB/SO EEO POC, shall forward the record retention and preservation letter to the managers within his/her chain-of-command who have/may have custody of information related to the allegation identified in the letter. The RMO, in consultation with the LOB/SO EEO contact, must also discuss whether there are any other individuals involved in the allegations identified outside of the RMO's chain-of-command (such as HR, Budget Office, etc.), and disseminate the preservation letter to those individuals. The RMO must retain a record of any individual who received the preservation letter.

c. The LOB/SO EEO POC must also take steps to ensure that potentially relevant information from any departing employee is retained and preserved. If potentially relevant information is on a departing employee's computer, an image of their computer must be made and retained before the computer is recycled. Any potentially relevant hard copy information of a departing employee must also be preserved in a secure area to ensure proper retention.

d. All information must be located, retained and preserved until receipt of written notification from ACR or AGC that retention and preservation is no longer required.

**13. Additional Information.** Additional information on the EEO complaint process may be found at <https://employees.faa.gov/org/staffoffices/acr/> or in Appendix B of this order.

## Chapter 5. Administrative Information

**1. Distribution of this Order.** Distribute this order to branch level and above and to all field offices and facilities. It is available electronically in the Central Repository of Directives at [https://employees.faa.gov/tools\\_resources/orders\\_notices/](https://employees.faa.gov/tools_resources/orders_notices/)

**2. Authority to modify this Order.** The Assistant Administrator for Civil Rights may modify requirements to implement and manage the FAA EEO Program in accordance with applicable laws, Executive Orders, regulations, and FAA policy guidance. The Administrator reserves the authority to approve modifications that set policy, delegate authority, or assign responsibility.

**3. For more information.** Contact your servicing Civil Rights Director or visit the ACR homepage at <https://employees.faa.gov/org/staffoffices/acr/> to see a list of contacts for each Civil Rights Office.

## Appendix A. Definitions

The following definitions are not comprehensive. They are intended merely to provide a brief reference guide.

- 1. Accountability Board:** On July 1, 1998, the FAA Administrator established the Accountability Board to provide oversight and ensure that management is accountable for responding to allegations of harassment or misconduct. The Board, comprised of senior level executives, sets standardized procedures so that management responds to allegations in a timely, consistent, and appropriate manner. The Accountability Board reviews management's responses to all allegations or incidents of verbal, written, graphic, or physical harassment, sexual harassment, sexual misconduct, and other misconduct that creates or that may reasonably be expected to create an intimidating, hostile, or offensive work environment based on race, color, religion, sex (including pregnancy and gender identity), sexual orientation, national origin, age, disability (mental or physical) or genetic information. The Accountability Board also accepts allegations of reprisal for participation in the Accountability Board process. More information about the Accountability Board can be found in the Accountability Board Order 1110.125A and on the FAA intranet site.
- 2. Aggrieved person:** A person who has filed an EEO informal pre-complaint.
- 3. Alternative Dispute Resolution (ADR):** A range of problem solving processes used for resolving conflict in lieu of formal, adversarial methods like litigation. These processes usually involve the use of a neutral third party who works with the parties in the dispute to help them find mutually acceptable solutions. ADR processes include, but are not limited to: negotiation, facilitation, conciliation, mediation, early neutral evaluation, mini-trial, and arbitration. Although mediation is the primary process used by the FAA, other ADR processes may be used if the equal employment opportunity EEO ADR Specialist decides they are appropriate and the parties agree.
- 4. Barrier to Equal Employment Opportunity:** Any policy, practice or procedure that artificially impedes the ability of any employee or applicant to participate equally in an employment opportunity.
- 5. Complainant:** A person who has filed an EEO formal complaint.
- 6. Diversity (As defined by the Office of Personnel Management [OPM]):** Workforce diversity is a collection of individual attributes that, together, help agencies pursue organizational objectives efficiently and effectively. These include, but are not limited to, characteristics such as national origin, language, race, color, disability, ethnicity, gender, age, religion, sexual orientation, socioeconomic status, veteran status, and family structures. The concept also encompasses differences among people concerning where they are from and where they have lived and their differences of thought and life experiences. Diversity also infers 'inclusion' which is a culture that connects each employee to the organization; encourages collaboration, flexibility, and fairness; and leverages diversity throughout the organization so that all individuals are able to participate and contribute to their full potential.

**7. Diversity Management:** A management approach that focuses on a manager's ability to create, nurture and utilize the variety of thoughts, view points and work experiences on a team to create the best possible product in order to further the organization's mission. Diversity Management is one of the critical success factors for the "Results-Oriented Performance Culture" in the Organizational Excellence section of the FAA Destination 2025. The concept of diversity management is captured in the performance expectations articulated under the "Leading People" major employment responsibility for executives and managers. Diversity management does not mean that managers may make decisions based on race, color, religion, sex (including pregnancy or gender identity), genetic information, national origin, age, disability (mental or physical), sexual orientation, or prior participation in protected EEO activity (reprisal or retaliation).

**8. Equal Employment Opportunity (EEO):** Legal prohibition on discrimination in employment because of race, color, religion, sex (including pregnancy and gender identity), genetic information, national origin, age, disability (mental or physical), sexual orientation, or prior participation in a protected EEO activity (reprisal or retaliation).

**9. Equal Employment Opportunity Commission (EEOC):** The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy and gender identity), national origin, age (40 or older), disability (mental or physical), or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit (participated in protected activity). Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases).

**10. EEOC Administrative Judge (AJ):** The official who presides over an EEOC trial-type hearing to resolve an EEO complaint. Once an Administrative Judge is appointed, the Administrative Judge has full responsibility for the adjudication of the complaint. The agency cannot dismiss a case that has been referred to the EEOC for a hearing.

**11. EEOC Office of Federal Operations (OFO):** The OFO ensures equality of opportunity within the federal government through its oversight function and by vigorously enforcing, through regulatory and adjudicatory authority, federal legislation prohibiting discrimination in employment by government agencies. Attorneys in the Appellate Review Program (ARP) review the administrative record in employment discrimination appeals from federal employees, conduct extensive legal research and write appellate decisions on behalf of the EEOC. Attorneys and EEO Specialists in the Federal Sector Program (FSP) have oversight responsibility for federal agencies' equal employment opportunity programs nationwide. They provide technical assistance and program, policy and legal guidance and expertise to EEOC stakeholders. Attorneys in the Special Services Staff Unit conduct special EEO investigations, participate in alternative dispute resolution activities, and perform legal research and writing for the quarterly EEO Digest. OFO assists in researching and drafting appellate decisions, preparing legal memoranda on various EEO issues, providing technical assistance and guidance to EEOC stakeholders, responding to congressional inquiries, monitoring compliance with OFO decisions,

**12. Final Agency Decision (FAD):** This is the final decision on a formal EEO complaint. If discrimination was found, it outlines the corrective actions. The FAD also advises the complainant on their appeal rights. The FAD is issued by DOT DOCR.

**13. Former Employee:** For purposes of this order, an individual who was at one time employed by the agency including term, temporary, intern, part-time, full-time, career, career conditional, permanent or other agency employee.

**14. Genetic Information Non-Discrimination Act (GINA):** This federal law prohibits discrimination in health coverage and employment based on genetic information. GINA prohibits genetic discrimination against employees, former employees and applicants for employment at federal agencies. GINA defines genetic information as information from genetic tests of the individual or their family members, including family medical history; genetic information of a fetus carried by the individual, or carried by an individual's family member. GINA also protects genetic information of embryos lawfully held by an individual or family member receiving assistive reproductive services. Information about an individual's or family member's request for or receipt of genetic services is also considered genetic information.

**15. Harassment:** Unwelcome conduct that is based on race, color, religion, sex (including pregnancy and gender identity), genetic information, national origin, age, disability (mental or physical), sexual orientation or prior participation in a protected EEO activity (reprisal or retaliation). Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

**16. Individual with a Disability. A person who:**

- a. Has a physical or mental impairment that substantially limits one or more major life activities;
- b. Has a record of such an impairment; or
- c. Is regarded as having such an impairment.

**17. Management Directive 715 (MD-715):** The policy guidance which the EEOC provides to federal agencies for their use in establishing and maintaining effective programs of equal employment opportunity under section 717 of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. Section 2000e et seq. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. Section 791 et seq. MD-715 provides a roadmap for creating effective equal employment opportunity (EEO) programs for all federal employees as required by Title VII and the rehabilitation programs for all federal employees as required by Title VII and the Rehabilitation Act. MD-715 took effect on October 1, 2003. MD-715 requires that agencies establish procedures to prevent all forms of discrimination, including race, color religion, sex (including pregnancy and gender identity), genetic information, national origin, age, disability (mental or physical) or reprisal/retaliation for engaging in prior protected EEO activity.

**18. Model EEO Program:** A program established pursuant to EEOC MD-715 to represent the FAA program to promote EEO for all employees and applications. The central principle underlying the FAA Model EEO Program is all employment decisions are free from discrimination against any applicant or employee based on race, color, religion, sex (including pregnancy and gender identity), genetic information, national origin, age, disability (mental or physical), sexual orientation, prior participation in a protected EEO activity (reprisal or retaliation) or any other non-merit factor. In other words, managers' commitment to a Model EEO Program is reflected, in part, in their ensuring that there is free and open competition for employment opportunities and that there are no artificial barriers impeding the ability of individuals to participate in employment opportunities. The FAA Model EEO Program is comprised of the following six essential elements:

(1) Demonstrated commitment from FAA leadership. The Administrator must issue a written policy statement expressing a commitment to EEO and a workplace free of discriminatory harassment. This statement should be issued at the beginning of the Administrator's tenure and thereafter on an annual basis and disseminated to all employees;

(2) Integration of EEO into the FAA strategic mission. This can be accomplished, in part, by maintaining a reporting structure that provides the FAA Assistant Administrator for Civil Rights with regular access to the FAA Administrator and other senior management officials for reporting on the effectiveness, efficiency and, in consultation with the AGC, legal compliance of the FAA Title VII and Rehabilitation Act programs, and using various media to distribute information concerning federal EEO laws to promote best workplace practices;

(3) Management and program accountability. Accountability will be accomplished, in part, by: a) maintaining clearly defined, well-communicated, consistently applied and fairly implemented personnel policies, selection and promotion procedures, evaluation procedures, standards of conduct and training systems; b) evaluating managers on efforts to ensure equality of opportunity for all employees; including EEO diversity requirements in all management/selecting official's critical performance elements and evaluating managers on their effort to ensure equality of opportunity for all employees and c) reviewing each finding of discrimination to determine the appropriateness of corrective action to be taken;

(4) Proactive prevention of unlawful discrimination. The FAA will conduct an annual self-assessment of its EEO Program in an effort to identify and eliminate potential barriers. This will be accomplished, in part, by conducting precise follow-up with lines of business (LOBs) to ensure they have addressed/implemented their stated objective to correct conditions identified to the EEOC as part of their Federal Agency Annual EEO Program Status Report, and have shared this report on the FAA website;

(5) Efficiency. The FAA must have an efficient and fair dispute resolution process. Identify, monitor and report significant trends reflected in complaint processing activity and analyze data relating to the nature and disposition of EEO complaints. Ensure timely and complete compliance with EEO orders and the provisions of settlement/resolution agreements; and

(6) Responsiveness and legal compliance. The FAA must report its program efforts and accomplishments to EEOC and respond to EEOC directives and orders in accordance with

EEOC instructions and time frames. Ensure that management fully and timely complies with final EEOC orders for corrective action and relief in EEO matters.

**19. “Need to Know” Exception to the Privacy Act:**

**a.** The “need to know” exception at Section 552 a(b)(I) allows disclosure of records maintained by FAA without consent “to those officers and employees of the FAA who have a need for the record in the performance of their duties.” See also 49 CFR Section 10.35(a)(1)

**b.** Some examples of proper intra-FAA “need to know” disclosures include:

(1) disclosure to FAA attorney or AHR Specialist defending FAA actions;

(2) disclosure of information in plaintiff’s medical records to other managers with responsibilities for making employment and/or disciplinary decisions regarding plaintiff; and

(3) disclosure of employee’s personnel records to FAA attorney and AHR specialist for purpose of preparing response to discrimination complaint.

**c.** The Privacy Act requires agencies to keep an accurate accounting of disclosures of information from a record EXCEPT for disclosures, among others, under Section 552a(b)(I) – the “need to know” exception. The implementing regulations in 49 CFR Section 10.23 states the same, as well as FAA Order 1280.1B, which states that no accounting is required for disclosure to FAA officials and employees who have a need for the record in the performance of their duties.

**20. Protected EEO activity:** Activities such as complaining about discrimination, filing a charge of discrimination, or participating in an employment discrimination investigation or lawsuit. Discrimination based on participation in protected EEO activity is unlawful.

**21. Reasonable Accommodation (For those with a disability):**

**a.** Any change in the work environment or the way things are usually done which results in equal employment opportunity (EEO) for an individual with a disability. Reasonable accommodation is used to enable qualified individuals with disabilities to successfully perform the essential functions of their jobs and/or provide access to the benefits and privileges of employment. In accordance with Title I of the Americans with Disabilities Act of 1990 (the “ADA”) the FAA must provide reasonable accommodation to a qualified individual with a disability (mental or physical) unless doing so will impose an undue hardship. An undue hardship determination must be approved by the Secretary of Transportation or his/her designee. There are three categories of reasonable accommodations:

(1) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(2) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(3) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

(4) The procedures for processing reasonable accommodation requests are contained in DOT Order 1011.1 and FAA Order 1400.12.

**22. 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. Reprisal is often referred to as retaliation.

**23. Unlawful Discrimination in Employment:** The term encompasses both intentional (disparate treatment) and unintentional (disparate impact) discrimination.

**a.** Disparate treatment discrimination generally occurs when an individual has been subjected to different treatment with regard to an employment decision because of his or her race, color, religion, sex (including pregnancy and gender identity), genetic information, national origin, age, disability (mental or physical), sexual orientation, or in reprisal or retaliation for having raised a claim of discrimination, participated in an investigation into a claim, or otherwise opposed discriminatory practices.

**b.** Disparate impact discrimination generally occurs when an employment practice disproportionately and negatively impacts a group or class of individuals.

## Appendix B. Legal Authority

### 1. Federal laws prohibiting employment discrimination in the federal sector include:

a. Title VII of the Civil Rights Act of 1964, as amended, (Title VII) (42 USC 2000e-16) which prohibits employment discrimination based on race, color, religion, sex (including pregnancy and gender identity), genetic information, or national origin.

b. Equal Pay Act of 1963, as amended, (EPA) (29 U.S.C.206 (d)) prohibits discriminating against employees on the basis of sex (including pregnancy and gender identity) by paying wages to employees in such establishment at a rate less than the rate at which an employer pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

c. Age Discrimination in Employment Act of 1967, as amended, (ADEA) (29 USC 633a) which protects individuals who are 40 years of age or older.

d. Sections 501 and 505 of the Rehabilitation Act of 1973, as amended, (29 USC 791 and 29 USC 794a, respectively) which requires an affirmative action program plan for the hiring, advancement and placement of disabled individuals, as that term is defined by statute, and prohibits discrimination against qualified federal employees and applicants for federal employment with disabilities, respectively.

e. Section 504 of the Rehabilitation Act of 1973, as amended, (29 USC 794) requires that no otherwise qualified individual with a disability be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or any program or activity being conducted by a federal agency. Section 504 requires, in part, that FAA facilities be accessible to people with disabilities.

f. Section 508 of the Rehabilitation Act of 1973, as amended, (29 USC 794d) requires that when federal agencies develop, procure, maintain, or use electronic and information technology, federal employees with disabilities have access to and use of information and data that is comparable to the access and use by federal employees who are not individuals with disabilities, unless an undue burden would be imposed on the FAA. Section 508 also requires that individuals with disabilities, who are members of the public seeking information or services from the FAA, have access to and use of information and data that is comparable to that provided to the public who are not individuals with disabilities, unless an undue burden would be imposed on the FAA.

g. Americans with Disabilities Act (ADA) of 1990, as amended by the ADA Amendments Act of 2008. The substantive employment standards of the ADA, which are applicable to the Federal Government through the Rehabilitation Act, can be found at 42 U.S.C. Section 12111, et seq. and 42 U.S.C. Sections 12201-204 and 12210.

**h.** The Genetic Information and Nondiscrimination Act of 2008 (GINA). This federal law prohibits discrimination in health coverage and employment based on genetic information. GINA prohibits genetic discrimination against employees, former employees and applicants for employment at federal agencies.

**2. Other related laws and regulations in the federal sector include:**

**a.** Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002, which outlines requirements for federal FAA reimbursement to the judgment fund, EEO reporting and training.

**b.** Alternative Dispute Resolution (ADR) Act of 1996, Public Law 104-320, which outlines requirements and procedures for federal agencies to employ with regard to ADR.

**c.** Under Section 40122(g)(2)(D) of Title 49 of the United States Code, section 7204 of Title 5, relating to antidiscrimination, is still applicable to the FAA following implementation of the FAA Personnel Management System (PMS), effective April 1, 1996.

**3. FAA Personnel Management System, Merit Principles related to equal opportunity:**

**a.** Recruitment should be from qualified individuals regardless of race, color, religion, sex (including pregnancy and gender identity), genetic information, national origin, age, disability (mental or physical), sexual orientation, or any other non-merit factor. Selection and advancement should be determined solely on the basis of relative knowledge, skills and abilities, after fair and open competition, which assures that all receive equal opportunity.

**b.** All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, sex (including pregnancy and gender identity), genetic information, national origin, age, sexual orientation, marital status, or disability (mental or physical), and with proper regard for their privacy and constitutional rights.

**c.** Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector; appropriate incentives and recognition should be provided for excellence in performance.

**d. Please see:**

**[Review this link for more information on merit principles:](https://employees.faa.gov/org/staffoffices/ahr/program_policies/policy_guidance/hr_policies/pms/pmsintro/#VII)**

[https://employees.faa.gov/org/staffoffices/ahr/program\\_policies/policy\\_guidance/hr\\_policies/pms/pmsintro/#VII](https://employees.faa.gov/org/staffoffices/ahr/program_policies/policy_guidance/hr_policies/pms/pmsintro/#VII)

**4. FAA Personnel Management System, prohibited personnel practices related to equal opportunity:**

a. Any FAA employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority: discriminate for or against any employee or applicant for employment, on the basis of: (1) race, color, religion, sex (including pregnancy and gender identity), national origin, as prohibited under Section 717 of the Civil Rights Acts of 1964 (42 USC 2000e-16); (2) age, as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 USC 631, 633a); (3) sex (including pregnancy and gender identity), as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938 (29 USC 206 (d)); (4) disability, as prohibited under Section 501 of the Rehabilitation Act of 1973 (29 USC 791); (5) or marital status, sexual orientation, or political affiliation, as prohibited under any law, rule, or regulation; (6) or genetic information as prohibited under GINA.

**b. Review this link for more information on prohibited personnel practices:**

[https://employees.faa.gov/org/staffoffices/ahr/program\\_policies/policy\\_guidance/hr\\_policies/pms/pmsintro/#VIII](https://employees.faa.gov/org/staffoffices/ahr/program_policies/policy_guidance/hr_policies/pms/pmsintro/#VIII)

**5. The Executive Orders for the EEO and Special Emphasis Programs:**

- a. Executive Order 11246: Equal Employment Opportunity
- b. Executive Order 11375: Amending Executive Order No. 11246, relating to equal employment opportunity
- c. Executive Order 13078: amended by EO 13172; EO 13187; EO 13583, Increasing Employment of Adults with Disabilities
- d. Executive Order 13164: Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation
- e. Executive Order 13087: Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government
- f. Executive Order 13548: Increasing Federal Employment of Individuals With Disabilities
- g. Executive Order 13583: Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce

**6. The regulatory legal authority for the federal sector EEO program includes:**

Title 29 CFR §1614, Federal Sector EEO, which outline the requirements relevant to federal sector equal employment opportunity.

**7. The Equal Employment Opportunity Commission's (EEOC) policy guidance related to federal sector EEO programs includes:**

a. MD-110 dated November 9, 1999, which provides additional EEOC policies, procedures, and guidance on the processing of employment discrimination complaints.

b. MD-715, dated June 20, 2004, which defines the requirements for a Model EEO Program in the federal sector.

**8. The FAA policy guidance related to its federal sector EEO program includes:**

a. The Department of Transportation (DOT) memorandum dated March 7, 1998, in which the complaint procedures for DOT employees and applicants for DOT employment to initiate a discrimination complaint based on sexual orientation are identified.

b. DOT Order 1011.1, dated September 16, 2002, Procedures for Processing Reasonable Accommodation Requests by Employees and Applicants with Disabilities, dated September 16, 2002.

c. FAA Order 1400.12, dated March 22, 2004, Processing Accommodation Requests for People with Disabilities, dated March 22, 2004.

d. DOT Order 2101.1, DOT ADR Methods, dated October 16, 1998.

e. FAA Order 1400.10, EEO Mediation Program, dated December 13, 1999.

**9. Websites with reference material related to federal EEO include:**

a. [www.eeoc.gov](http://www.eeoc.gov);

b. [www.mspb.gov](http://www.mspb.gov); and

c. [www.faa.gov](http://www.faa.gov).

**Appendix C. FAA Form 1320-19, Directive Feedback Information**



U.S. Department of Transportation  
**Federal Aviation Administration**

**Directive Feedback Information**

Please submit any written comments or recommendations for improving this directive, or suggest new items or subjects to be added to it. Also, if you find an error, please tell us about it.

Subject: 1400.8A, FAA Equal Employment Opportunity (EEO) Program

To: Directive Management Officer, ACR-003

*(Please check all appropriate line items)*

An error (procedural or typographical) has been noted in paragraph \_\_\_\_\_ on page \_\_\_\_\_ .

Recommend paragraph \_\_\_\_\_ on page \_\_\_\_\_ be changed as follows: *(attach separate sheet if necessary)*

In a future change to this directive, please include coverage on the following subject *(briefly describe what you want added)*:

Other comments:

I would like to discuss the above. Please contact me.

Submitted by: \_\_\_\_\_ Date: \_\_\_\_\_

FTS Telephone Number: \_\_\_\_\_ Routing Symbol: \_\_\_\_\_