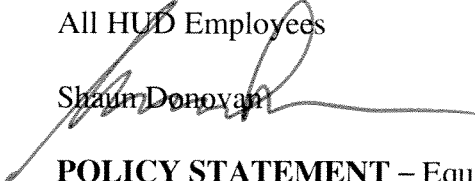




**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**THE SECRETARY**  
WASHINGTON, DC 20410-0001

June 2, 2009

MEMORANDUM FOR: All HUD Employees

FROM:  Shaun Donovan

SUBJECT: **POLICY STATEMENT** – Equal Employment Opportunity, Employment of Persons with Disabilities, Prevention of Unlawful Harassment, Disabled Veterans, and Addressing Sexual Orientation in the Workplace

I am issuing this Equal Employment Opportunity (EEO) Policy Statement in furtherance of my commitment to assuring that HUD is a workplace where all employees are given equal employment opportunity and are free from discrimination.

**EQUAL EMPLOYMENT OPPORTUNITY**

**It is the policy and intent of the Department of Housing and Urban Development to provide equal employment opportunity for all persons regardless of race, color, religion, sex, national origin, age, disability, or sexual orientation and to ensure freedom from retaliation for participation in the equal employment opportunity process.**

This policy applies to all personnel/employment programs, and management practices and decisions including, but not limited to, recruitment, hiring, merit promotion, transfers, reassignments, training and career development, benefits, and separation.

I am firmly committed to ensuring that HUD complies with all civil rights and EEO laws. Managers and supervisors, at all levels, share the responsibility for creating and maintaining a model EEO program, as required under both Title VII of the Civil Rights Act of 1964, as amended, and Section 501 of the Rehabilitation Act of 1973, as amended. I strongly urge each manager and supervisor to assume a positive position of leadership and ensure that all employees and applicants are provided equal opportunity to compete freely and openly for employment opportunities. Managers will continue to be held accountable for achieving the Department's adherence to this policy and will have their annual performance evaluated in terms of these and other departmental strategic goals.

I would like to remind all employees of the departmentwide informal Alternative Dispute Resolution (ADR) Program and encourage its use to resolve workplace disputes. All supervisors

and managers are required to participate in ADR on matters determined appropriate for ADR. If the parties fail to reach an agreement during the mediation process, the management official must document why, in writing, to my office. Specific information on HUD's ADR Program and EEO Counselors is available on the Office of Departmental Equal Employment Opportunity (ODEEO) website at HUD@Work.

## **EMPLOYMENT AND ACCOMMODATION OF PERSONS WITH DISABILITIES**

**It is the policy of HUD to establish employment practices to promote active recruitment and proper placement of qualified persons with disabilities; provide selective placement assistance to assure retention and career advancement opportunities; and to assure that persons with disabilities have a full opportunity to be represented at every level in the workforce.**

**It is also the policy of HUD to provide reasonable accommodation to the known physical or mental limitations of qualified employees and job applicants with disabilities, as required by the Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended, unless it can be shown that the accommodation would impose an undue hardship on its operations.**

It is the goal of the Department to be a "model employer" of persons with disabilities by providing full and fair consideration, employment, advancement, and retention of persons with targeted disabilities in a broad range of grade levels and occupations commensurate with their knowledge, skills, and abilities. Further, HUD will ensure that persons with disabilities are not excluded or limited because of job design or because of architectural, communication, procedural, or attitudinal barriers.

Managers and supervisors are responsible for achieving these objectives in accordance with the Department's EEO Program covering the recruitment, hiring, and advancement of persons with disabilities. In accordance with the Department's Handbook 7855.1, "Procedures for Providing Reasonable Accommodation," they also are responsible, at their respective office levels, for providing reasonable accommodation. A reasonable accommodation is a logical adjustment made to a job or work environment that enables a qualified person with disabilities to perform the essential functions of a position.

## UNLAWFUL HARASSMENT

**It is the policy of HUD that harassment based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, or disability is unacceptable conduct in the work-place and will not be tolerated, nor will retaliation against anyone who complains of harassment.**

I am committed to a workplace that is free of improper and unlawful behavior. There is no place for any conduct that interferes with an individual's work or creates an intimidating, hostile, or offensive work environment. The Department's anti-harassment policy covers harassment by anyone in the workplace – supervisors, coworkers, and nonemployees.

**Harassment** violates federal law when it involves discriminatory treatment based on race, color, sex (with or without sexual conduct), religion, national origin, age, or disability, or because an employee opposed job discrimination or participated in an investigation or complaint proceeding under the EEO statutes. An employer may be responsible for harassment by a manager or supervisor that culminates in a tangible employment action. If the harassment does not lead to a tangible employment action, the employer is responsible, unless the employer proves that: (1) it exercised reasonable care to prevent and promptly correct any harassment; and (2) the employee unreasonably failed to take advantage of any preventive or corrective actions provided by the employer or to avoid harm otherwise. Federal law does not prohibit simple teasing, offhand comments, or isolated incidents that are not extremely serious. Conduct leading to harassment must be sufficiently frequent or severe to create a hostile work environment or result in a "tangible employment action," such as hiring, firing, promotion, or demotion.

**Sexual harassment** is a form of sex discrimination and violates Title VII of the Civil Rights Act of 1964. There may be other causes of action under state or local law in addition to those found under federal civil rights law. These include assault and battery, intentional infliction of emotional distress, wrongful discharge, and negligence. Some sexual advances may even result in criminal charges, such as sexual assault or rape. Sexual harassment has been determined by the Equal Employment Opportunity Commission (EEOC) to be "unwelcome advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature 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 work environment." See EEOC regulation 29 CFR 1604.11(a). Discrimination of a sexual nature takes on many forms and includes, but is not limited to, the following:

- Sexually explicit verbal abuse, such as slurs, jokes, statements, gestures, requests for sexual favors, and conversations containing sexual comments.
- Unwelcomed sexual flirtation or advances.
- Requests for sexual activity in exchange for favorable treatment or continued employment.
- Inappropriate contacts, such as unnecessary, unwelcome, or unsolicited touching, patting, pinching, grabbing, cornering, or repeated brushing against another person's body.
- Visual displays in the workplace, such as pictures, cartoons, electronic messages, or Internet websites of a sexual nature.

HUD is responsible for creating a working climate free from unsolicited and unwelcome sexual overtures. The EEOC regulations at 29 CFR 1604.11(d) and (e) state, "With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate action. An employer may also be responsible for the acts of nonemployees with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate action."

HUD managers and supervisors are responsible for ensuring a workplace that is free from unlawful sexual harassment. Managers and supervisors have an added responsibility to be aware of what constitutes sexual harassment, to explain the sanctions for harassment, and to take immediate and definitive action. When inappropriate conduct is identified, alleged, or suspected, I expect swift, thorough, and effective action to discern the facts and, where warranted, take appropriate corrective action designed to end the conduct.

Any employee who believes that he or she is the victim of sexual harassment should make it clear to the harasser that the conduct is unwelcome and must cease. The employee should also report the incident(s) to the appropriate agency official, specifically, the immediate supervisor, any supervisor in the chain of command, or a staff member of the ODEEO who will ensure that the matter is handled in a confidential manner. Any employee who is found to have engaged in harassment against any other employee may expect appropriate disciplinary action. All new employees shall be informed of this policy during their initial orientation sessions. This policy shall be periodically reiterated to all employees. For additional information, see "Unlawful Harassment Policy and Procedures for Filing a Harassment Complaint," on ODEEO's website at HUD@Work.

## **DISABLED VETERANS EMPLOYMENT**

**It is the policy of HUD to promote the maximum employment and job advancement for qualified disabled veterans, similar to its policy, goals, and objectives for all persons with disabilities.**

Managers and supervisors are responsible for achieving this objective, at their respective office levels, in accordance with the Department's Disabled Veterans Affirmative Action Program (DVAAP) Plan.

## **DISCRIMINATION BASED ON SEXUAL ORIENTATION**

**It is the policy of HUD to prohibit discrimination based on sexual orientation.**

While employees and applicants **may not** seek relief from the EEOC or file a discrimination complaint based on sexual orientation under Title VII of the Civil Rights Act of 1964, as amended, HUD is committed to promoting a work environment that is free from discrimination on the basis of sexual orientation, in accordance with Executive Order 13087, Addressing Sexual Orientation Discrimination in Federal Civilian Employment, dated May 28, 1998. Such discrimination with respect to employment conduct is not acceptable and will not be tolerated by anyone at HUD.

The Civil Service Reform Act of 1978 describes prohibited personnel practices. One of them, contained in 5 U.S.C. 2302(b)(10), prohibits any employee who has authority to take personnel actions from discriminating for or against employees or applicants for employment on the basis of conduct that does not adversely affect either the employee's own job performance or the performance of others. Subsection (c) of 5 U.S.C. 2302 gives notice to agency heads that they will be held responsible for the prevention of prohibited personnel practices. The Office of Personnel Management (OPM) has interpreted this statute to prohibit discrimination based on sexual orientation.

Employees or applicants for employment who believe that a prohibited personnel practice has been committed against them that constitutes discrimination based on sexual orientation may seek assistance, under certain circumstances through any of the following:

- I. Merit Systems Protection Board.
- II. Office of Special Counsel.
- III. Negotiated Grievance Procedure.
- IV. Administrative Grievance Procedure.

Employees should report to their supervisor instances of unlawful discrimination based on sexual orientation. When made aware of problems, supervisors should consult with the Office of Human Resources or Office of General Counsel on the best course of action for the particular employee. If the supervisor is the alleged harasser, the employee should report the matter initially to the Office of Human Resources, which will advise the employee as to the appropriate course of action.

I expect each of you to vigorously promote HUD's EEO Program as an effective means of resolving your workplace disputes at the earliest possible time. Questions regarding the EEO Program should be directed to the EEO Division Director, ODEEO, at 202-708-5921.