



U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL

**DOT's Updated Anti-Harassment Policy
Meets EEOC Requirements, but Program
Compliance Hinges on Procedure
Implementation and Data Usage**

OST

Report No. ST2019072

September 11, 2019





DOT's Updated Anti-Harassment Policy Meets EEOC Requirements, but Program Compliance Hinges on Procedure Implementation and Data Usage

Self-initiated

Office of the Secretary of Transportation | ST2019072 | September 11, 2019

What We Looked At

The U.S. Equal Employment Opportunity Commission (EEOC) requires Federal agencies to establish anti-harassment programs, which are designed to identify and resolve harassment issues before they become severe and pervasive. We initiated this review after a previous audit identified concerns about the Department of Transportation's (DOT) Operating Administrations' (OA) anti-harassment policies and procedures. Our audit objectives were to assess the extent to which the Department and its OAs (1) have anti-harassment policies and procedures that comply with EEOC guidance and (2) collect and use data on harassment complaints.

What We Found

The DOT policy in place during our audit complied with 13 of 18 EEOC requirements but did not clearly explain prohibited conduct, require the EEO program to inform the anti-harassment program about all harassment allegations, provide for periodic training of managers, provide for periodic training of employees, or create firewalls between the decision makers for the anti-harassment and EEO programs. It also did not require OAs to develop implementation procedures, and the Department and four OAs did not have them, as EEOC requires. One reason for the gaps was EEOC's evolving and expanding oversight of anti-harassment programs—which led the Department to develop its *U.S. DOT's Policy Framework for the Prevention of Harassment and Unprofessional Conduct (Policy Framework)* over several years, including throughout our audit. In response to our findings, the Department closed all the gaps we identified and issued the *Policy Framework* on June 21, 2019. Also, while the Department was responsible for collecting, monitoring, and analyzing harassment data for 10 OAs, it did not have a system in place that met EEOC requirements. However, the *Policy Framework* establishes data collection requirements that may enhance the Department's and the OAs' ability to identify, address, and stop harassment before it becomes severe or pervasive.

Our Recommendations

The Department concurred with our recommendation for improving DOT's anti-harassment procedures. We consider recommendation 1 resolved but open pending completion of the Department's planned actions.

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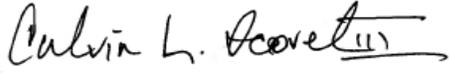
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Memorandum

Date: September 11, 2019

Subject: ACTION: DOT's Updated Anti-Harassment Policy Meets EEOC Requirements, but Program Compliance Hinges on Procedure Implementation and Data Usage | Report No. ST2019072

From: Calvin L. Scovel III 
Inspector General

To: Deputy Secretary

The U.S. Equal Employment Opportunity Commission (EEOC) has established that Federal agencies must have anti-harassment programs and provides sub-regulatory guidance with minimum requirements to help them develop the program policies and procedures.¹ According to a June 2016 EEOC report, those who experience workplace harassment suffer mental, physical, and economic harm.² Beyond that, workplace harassment affects *all* workers, leading to decreased productivity, increased turnover, and harm to the organization's reputation. Yet, harassment remains a problem in the Federal workforce.³

Employees who believe they have experienced harassment can seek redress through the EEO process, which will determine whether the unwanted behavior is "severe or pervasive," the standard established by the courts as the threshold for

¹ Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990. The U.S. Equal Employment Opportunity Commission's (EEOC) sub-regulatory guidance directs Federal agencies on implementing these laws; this guidance includes EEOC's Management Directive 715 (MD-715), especially the agency self-assessment checklist in part G. When the sub-regulatory guidance contains directive language, such as "must" or "will," throughout this report, we refer to it as an EEOC requirement. When the guidance contains suggestive language, such as "may" or "could," we refer to it as a recommendation.

² EEOC Select Task Force on the Study of Harassment in the Workplace, *Report of the Co-Chairs of the Select Task Force on the Study of Harassment in the Workplace*, June 2016.

³ Data from the Merit System Protection Board indicate that sexual harassment, a component of workplace harassment, remains a pervasive issue in the Federal Government. The *2016 Merit Principles Survey* of Federal employees found that 18 percent of female and 6 percent of male Federal employees reported experiencing at least one instance of sexual harassment in the preceding 2 years. In addition, an EEOC official reported in May 2019 testimony before the U.S. Commission on Civil Rights that all forms of harassment comprise 50 percent of all Federal EEO complaints, and sexual harassment comprises 4 percent of all Federal EEO complaints.

unlawful harassment.⁴ An anti-harassment program is designed to identify and resolve harassment issues before they become severe and pervasive. Unlike the EEOC, an anti-harassment program can compel an agency to take disciplinary actions—such as warnings, suspension, or termination—against employees. Thus it plays a similar but different role than the EEO process and helps the cognizant Federal agency take prompt, thorough, and appropriate action when necessary.

During our audit of the U.S. Merchant Marine Academy's (USMMA) Sexual Assault Prevention and Response Program, we identified concerns about the extent to which the Department of Transportation's (DOT) Operating Administrations (OA) establish and implement anti-harassment policies and procedures, including how they collect and use data on harassment complaints.⁵ Given the potential impact of harassment on the Department and its employees, we initiated an audit of DOT's anti-harassment policies and procedures. Our objectives were to assess the extent to which the Department and its OAs (1) have anti-harassment policies and procedures that comply with EEOC guidance and (2) collect and use data on harassment complaints.

We conducted our work in accordance with generally accepted Government auditing standards. Exhibit A details our scope and methodology; exhibit B lists the organizations we visited or contacted, and exhibit C lists the acronyms used in this report. Exhibits D and E list required and recommended items for anti-harassment policies and procedures, respectively, that we identified through our review of laws, regulations, and EEOC's sub-regulatory guidance related to harassment in the Federal Government. In the course of our audit, we did not assess the implementation or effectiveness of the anti-harassment program or assess the accuracy of any harassment complaint data.

We appreciate the courtesies and cooperation of Department of Transportation representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-1959 or Barry J. DeWeese, Assistant Inspector General for Surface Transportation Audits, at (202) 366-5630.

cc: The Secretary
DOT Audit Liaison, M-1
Federal Aviation Administrator
FAA Audit Liaison AAE-100
Federal Highway Administrator
FHWA Audit Liaison, HAIM-13
Federal Motor Carrier Safety Administrator

⁴ *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993).

⁵ *Gaps in USMMA's Sexual Assault Prevention and Response Program Limit Its Effectiveness* (OIG Report Number ST2018039), March 28, 2018. Office of Inspector General (OIG) reports and testimonies are available on our website: <http://www.oig.dot.gov>.

FMCSA Audit Liaison, MCPRS
Federal Railroad Administrator
FRA Audit Liaison, RAD-43
Federal Transit Administrator
FTA Audit Liaison, TBP-30
Maritime Administrator
MARAD Audit Liaison, MAR-392
National Highway Traffic Safety Administrator
NHTSA Audit Liaison, NPO-310
Pipeline and Hazardous Materials Safety Administrator
PHMSA Audit Liaison, PH-3
Saint Lawrence Seaway Development Corporation Administrator
SLSDC Audit Liaison

Results in Brief

While the Department's former anti-harassment policy did not fully comply with EEOC requirements, the recently issued policy closes all the gaps.

The departmental policy in place during the course of our audit was the *Secretarial Policy Statement on the Prevention of Harassment (Secretarial Policy Statement)*, issued April 24, 2018. It complied with 13 of 18 EEOC requirements but did not clearly explain prohibited conduct, require the EEO program to inform the anti-harassment program about all harassment allegations, provide for periodic training of managers, provide for periodic training of employees, or create firewalls between the decision makers for the anti-harassment and EEO programs. For example, an agency could create a firewall by assigning the investigative function to the EEO office and decisions on corrective action to a separate office. According to the EEOC, having separate decision makers is important because otherwise the EEO decision maker could be in the awkward position of finding that no EEO-actionable harm has occurred, but, based on the anti-harassment policy, corrective action is necessary. Furthermore, because the *Secretarial Policy Statement* did not require OAs to develop implementation procedures, the Department and 4 of the 10 OAs we reviewed did not have them, as EEOC requires.⁶ This lack of procedures could limit their ability to implement anti-harassment programs. One reason for the gaps in policy and the uneven procedures is EEOC's evolving oversight of anti-harassment programs, which has expanded over time. In response to the increased oversight, the Department began developing *U.S. DOT's Policy Framework for the Prevention of Harassment and Unprofessional Conduct (Policy Framework)*, in fiscal year 2013 and refined it over the years, including throughout our audit. The Department responded to our findings by closing gaps we identified in the draft *Policy Framework*, ultimately closing all of them and issuing the policy on June 21, 2019. Now that the Department has finalized and issued the *Policy Framework*, which requires the OAs to develop procedures to implement it, DOT will have an enhanced ability to proactively identify and resolve harassment issues.

⁶ We reviewed the following DOT components: Office of the Secretary of Transportation (OST), Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), National Highway Traffic Safety Administration (NHTSA), Pipeline and Hazardous Materials Safety Administration (PHMSA), and Saint Lawrence Seaway Development Corporation (SLSDC). To maintain our objectivity, we did not review OIG documents. For the purposes of this report, we are referring to all DOT components—including Secretarial Offices—as Operating Administrations (OA).

DOT and 9 of 10 OAs did not collect or use complete data about the harassment complaints they receive.

EEOC requires Federal agencies to have systems that accurately collect, monitor, and analyze anti-harassment program complaint processing and to use data to identify and disseminate significant trends. The Department is responsible for collecting, monitoring, and analyzing harassment data for the 10 OAs we reviewed; yet, it did not have a system that meets EEOC requirements. The OAs collected data in a variety of formats, and only the Federal Aviation Administration (FAA) collected all five categories that our discussions with EEOC and our past work at USMMA have identified as important—names, locations, offices, types of misconduct, and dates. Additionally, while the recently issued *Policy Framework* requires trend analyses, previously the Department did not use data to identify and disseminate significant trends, as EEOC requires, or to measure program effectiveness. Of the OAs, only FAA conducted its own trend analyses. Based on our review, the gaps in compliance with EEOC requirements for collecting and using data were due to a lack of departmental guidance. Specifically, the Department's *Secretarial Policy Statement* did not address collecting or using complete data related to harassment complaints. However, the *Policy Framework* resolves these issues. By implementing the data collection requirements in the *Policy Framework*, the Department and the OAs may be able to proactively identify, address, and stop harassment before it becomes severe or pervasive.

We are making a recommendation to enhance implementation of the Department's anti-harassment procedures.

DOT's *Secretarial Policy Statement* Did Not Fully Comply With EEOC Requirements, but Its New *Policy Framework* Closes the Gaps

The anti-harassment policy DOT had in place during the course of our audit, the *Secretarial Policy Statement*, complied with 13 of 18 EEOC requirements. The five gaps we found included, for example, no requirement for OAs to provide regular training for staff. Furthermore, at the time of the audit, DOT and some OAs lacked EEOC-required procedures for carrying out the policy. By the end of the audit, the Department had developed and issued its *Policy Framework*, which incorporates all of the EEOC policy requirements and directs OAs to develop implementation procedures.

DOT's Secretarial Policy Statement Complied With Most EEOC Requirements but Lacked Some Required Items and Procedures

While the DOT anti-harassment policy in place during the course of our audit complied with 13 of 18 EEOC requirements (see exhibit D), we found gaps in 5 areas. Specifically, the *Secretarial Policy Statement* did not:

- Clearly explain prohibited conduct;
- Ensure the OA's EEO office informs anti-harassment program officials about all EEO counseling activity related to allegations of harassment;
- Provide for periodic training of managers;
- Provide for periodic training of employees; and
- Require anti-harassment and EEO programs to have separate decision makers, such as assigning the investigative function to the EEO office and decisions on corrective actions to a separate office.

For example, three OAs did not have separate decision makers for their anti-harassment and EEO programs. According to EEOC, separate decision makers are important to help organizations avoid conflicts of interest. EEOC states that without a firewall between the EEO and anti-harassment program decision-makers, an official could be placed in the awkward position of finding that no EEO-actionable harm has occurred, but corrective action is necessary to comply with the anti-harassment policy.

In addition, we found unevenness in procedures for implementing the anti-harassment program policy. For example, DOT did not have departmentwide procedures for the *Secretarial Policy Statement*, and 4 of the 10 OAs we reviewed lacked them as well, because they were not required to have them. Indeed, officials at one OA could not identify the person or office in charge of their anti-harassment program. In contrast, the Federal Highway Administration (FHWA) has been piloting an anti-harassment program since 2017, and an Accountability Board has been reviewing cases of harassment at FAA since 1998. FAA's early adoption of an anti-harassment program can be attributed to previous scrutiny of

its handling of sexual harassment cases; in October 1997, for example, OIG issued a management advisory addressing sexual harassment at FAA.⁷

The gaps in the Department's *Secretarial Policy Statement* and unevenness in the OAs' anti-harassment procedures were due, in part, to EEOC's approach to oversight on this issue. EEOC characterizes its oversight of anti-harassment programs as evolving, and it has made adjustments over time. In 1999, it issued *Enforcement Guidance: Vicarious Employer Responsibility for Unlawful Harassment by Supervisors*, which established the requirement that employers have anti-harassment programs. In 2006, to clarify how the Federal sector should apply the guidance, EEOC published a report titled *Model EEO Programs Must Have an Effective Anti-Harassment Program*. In 2014, EEOC determined that many agencies had not yet issued compliant anti-harassment policies and included requirements to do so in its Management Directive 715 (MD-715) self-assessment instructions.⁸ In the MD-715 for 2018, EEOC revised those instructions to include more items about anti-harassment programs. Previously, the only items on this topic in the self-assessment instructions focused on policy distribution, funding for training, and including an assessment of supervisors' commitment to a harassment-free environment in their performance elements. See exhibits D and E for the list of required and recommended items for anti-harassment program policies and procedures that we identified in EEOC's guidance documents.

Due to the gaps we identified, the Department's *Secretarial Policy Statement* did not support an anti-harassment program that was fully compliant with EEOC requirements. Furthermore, the lack of procedures hindered the Department's and the OAs' ability to implement a program that would proactively identify and resolve harassment issues.

DOT's Policy Framework Addressed the Gaps We Identified and Is Now Compliant With EEOC Requirements

The Department took action to respond to the gaps we identified in the draft *Policy Framework* during the course of our audit. When we began our audit, the Department provided a draft version of the *Policy Framework*, dated September 2018, that closed 3 of the 5 gaps in the *Secretarial Policy Statement*. Specifically,

⁷ *Management Advisory Report on Civil Rights Matters (Sexual Harassment) Involving FAA* (OIG Report Number MA1998022), October 21, 1997.

⁸ EEOC requires all agencies with more than 1,000 employees to complete part G of its MD-715, which is an agency self-assessment checklist. At DOT, the Department completes this form on behalf of smaller OAs, and FAA, FHWA, FMCSA report individually.

the September 2018 version explained prohibited conduct clearly, provided for periodic training for managers, and provided for periodic training of employees. Additionally, it directed the OAs to develop procedures for implementing the policy. However, we once again found gaps in two areas: requiring the anti-harassment and EEO programs to have separate decision makers and ensuring the OA's EEO office informs anti-harassment program officials about all EEO counseling activity related to allegations of harassment. Also, because it was a draft, the *Policy Framework* introduced a gap in a third area—namely, the policy was not issued.

We shared our findings with the Department on February 13, 2019, and DOT officials told us a new draft version of the *Policy Framework* addressed these gaps. We analyzed this version, dated February 14, 2019, and determined that it had gaps in the same three areas as the September 2018 version. The section on separating anti-harassment and EEO program decision makers had been strengthened, with language stating that each OA must establish an Anti-Harassment Coordinator. However, the draft *Policy Framework* did not emphasize that the employee with this role should not be the EEO decision maker. It also did not require the EEO office in each OA to inform the anti-harassment program about *all* EEO counseling activity related to allegations of harassment. Instead, the February 14, 2019, version used the term “unlawful harassment” to mean the type of “severe or pervasive” harassment that can be remedied through the EEO process.

We shared these concerns with DOT on May 14, 2019, and the Department provided a revised draft *Policy Framework*, dated May 20, 2019, to us on May 22, 2019. This version complied with 16 of the 18 EEOC requirements. There were two gaps: the policy had not yet been issued, and it still did not require the EEO office in each OA to inform the anti-harassment program about *all* EEO counseling activity related to allegations of harassment. It only referred to “unlawful harassment.”

Department officials responded to our findings with a fourth draft version of the *Policy Framework*, dated May 29, 2019, that closed all the gaps except issuance. They also provided a version dated June 6, 2019, that met all the EEOC policy requirements; this policy was ultimately issued on June 21, 2019. See exhibit D for our analysis of each version of the *Policy Framework* we reviewed.

The final, issued *Policy Framework* requires the OAs to develop procedures to implement it. This will enhance DOT's ability to proactively identify and resolve harassment issues. During the course of our audit, officials at most OAs told us that they were postponing their efforts to develop implementation procedures for anti-harassment programs until the *Policy Framework* was final. Specifically, officials at 9 of the 10 OAs we reviewed told us they either had drafted procedures that they planned to finalize or align to the Department's policy once

it was issued, or they were waiting for the final policy before they began. The tenth agency, FAA, already had detailed procedures in place. The *Policy Framework* requires the OAs to submit their procedures to the Departmental Office of Civil Rights (DOCR) and Departmental Office of Human Resources Management for review and approval. This submission must occur prior to implementation and within 90 days of the issued policy's effective date. An official said DOCR will work "hand-in-hand" with the OAs to develop and implement their procedures, as well as set up a calendar and check in via phone and email to monitor compliance.

DOT and Most OAs Neither Collected Nor Used Complete Data on Harassment Complaints

The Department and all its OAs except FAA did not comply with EEOC requirements for collecting and using data. EEOC requires agencies to have systems that accurately collect, monitor, and analyze anti-harassment program complaints and how they are processed, and to use data to identify and disseminate significant trends.

Although the Department is responsible for the OAs, it did not have a DOT-wide system that met EEOC requirements for collecting harassment complaint data. One of the OAs, the National Highway Traffic Safety Administration (NHTSA), had information related to harassment complaints in its employee case files but did not systematically collect, monitor, or analyze the data. Nine OAs collected data on harassment complaints, but eight did not do so consistently or facilitate the identification and dissemination of significant trends by using common data fields and formats. Instead, they relied on a number of tools of varying utility, including Microsoft's Word and Excel programs. Of the nine OAs, four collected data through case trackers that were designed to provide status updates to employee and labor relations (ELR) staff rather than to monitor and analyze harassment complaint data. In fact, the official responsible for this work at one OA was not sure he could separate the harassment cases in the ELR tracker from the other cases, which include time and attendance issues, lost Government equipment, and performance concerns. Five of the nine OAs used a tracker that was specifically for harassment complaints (see table).

Table. Tracking Tools Used by OAs To Monitor Harassment Complaints

Operating Administration	No Tracker	ELR Tracker	Harassment Tracker
FAA			✓
FHWA			✓
FMCSA		✓	
FRA			✓
FTA		✓	
MARAD			✓
NHTSA	✓		
OST		✓	
PHMSA		✓	
SLSDC			✓
TOTAL	1	4	5

Source: OIG analysis of information provided by OAs

Of the OAs with trackers, only FAA collected all five categories of information that our discussions with EEOC and work at USMMA identified as important—names of the parties involved, including the alleged harasser; locations; offices; types of misconduct; and dates. The lack of such data hindered DOT’s and the OAs’ ability to identify significant trends.

Additionally, the Department did not use data to identify and disseminate significant trends, as EEOC requires, or to measure program effectiveness. Based on our past work with USMMA, the “repeat offender” represents a significant trend that agencies should be able to identify. An EEOC official indicated agencies should be able to recognize significant trends by office, type of harassment, or date. Furthermore, our work at USMMA, which included obtaining expert advice from the Centers for Disease Control and Prevention, revealed that the best measure of program effectiveness is self-reported data that show a decrease in incidents over time. However, in the absence of such data, closing the gap between official harassment reports and anonymous self-reports—such as those identified through surveys—is a valid measure of program effectiveness. It indicates that employees feel comfortable about reporting incidents to their agencies.

Similar to the Department, 9 of the 10 OAs did not conduct their own trend analyses. Some indicated they did not have enough complaints, up to two in a year,⁹ to warrant a trend analysis, although two OAs estimated they received six complaints annually. Without data that can highlight significant trends, the OAs might be missing opportunities to proactively identify, address, and stop harassment before it becomes severe or pervasive.

In contrast, FAA performed regular trend analyses on its estimated 470 to 500 complaints each year and used that information to take action.¹⁰ For example, one FAA official explained that, using the data, an Agency executive discovered that a facility had more harassment incidents than other facilities but took less serious disciplinary actions against those responsible. FAA determined that the facility did not apply formal discipline evenly, and the facility manager faced serious disciplinary action. A DOCR official described FAA's work to track harassment complaints and conduct significant trend analyses as a best practice.

The gaps in the Department's and the OAs' compliance with EEOC requirements for collecting and using data were due to a lack of departmental guidance. Specifically, the Department's *Secretarial Policy Statement* did not address collecting or using complete data related to harassment complaints. However, the recently issued *Policy Framework* addresses collecting data on the number of and bases for complaints, as well as information that allows OAs to identify significant trends based on offender name, dates, offices, and locations. By implementing the data collection requirements in the *Policy Framework*, the Department and the OAs may be able to proactively identify, address, and stop harassment before it becomes severe or pervasive.

Conclusion

The presence of harassment in the Federal workforce and its devastating impact on employees has been clearly established. To protect its employees and comply with Federal standards, DOT must both design and implement an effective anti-harassment program. As the OAs' own programs are at varying levels of maturity, the Department's oversight is critical. Further, issuing and implementing an anti-harassment policy framework that meets EEOC requirements DOT-wide is a

⁹ The small number of cases may not be indicative of an environment free of harassment, as the OAs do not conduct anonymous surveys to determine the overall incidence of harassment.

¹⁰ Given the shortfalls with data collection, we did not compare the number of complaints across the Department or relative to the OAs size. However, for perspective, FAA is by far the largest OA with about 45,500 employees, about 83 percent of the total personnel in the Department.

positive step to help OAs identify and resolve harassment issues before they become severe or pervasive.

Recommendations

To improve DOT's anti-harassment procedures, we recommend that the Deputy Secretary of Transportation direct the Departmental Office of Human Resource Management and the Departmental Office of Civil Rights to:

1. Collect and review each OA's anti-harassment program procedures and require revisions, as necessary, to bring them into compliance with DOT's policy and EEOC requirements.
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Agency Comments and Office of Inspector General Response

We provided the Department with our draft report on August 1, 2019, and received its response, dated August 28, 2019, which is included as an appendix to this report. The Department concurred with our recommendation and provided appropriate actions and a completion date for implementing the actions.

Actions Required

We consider recommendation 1 resolved but open pending completion of the Department's planned actions.

Exhibit A. Scope and Methodology

We conducted our work from October 2018 through August 2019 in accordance with generally accepted Government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit scope consisted of policies and procedures governing the Department of Transportation (DOT), as a whole, as well as those pertaining to the 10 Operating Administrations (OA)—Office of the Secretary of Transportation (OST), Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), National Highway Traffic Safety Administration (NHTSA), Pipeline and Hazardous Materials Safety Administration (PHMSA), and Saint Lawrence Seaway Development Corporation (SLSDC)—to the extent they had them. We did not include the Office of Inspector General (OIG) in our review for the following reasons:

1. GAGAS 3.19 states, “Auditors and audit organizations should avoid situations that could lead reasonable and informed third parties to conclude that the auditors and audit organizations are not independent and thus are not capable of exercising objective and impartial judgment on all issues associated with conducting the engagement and reporting on the work.”
2. This audit addresses upper-level executive establishment and oversight of organizational policy and procedures; examining these issues at OIG would create the appearance of an extreme lack of objectivity.

Our objectives were to assess the extent to which the Department and its OAs (1) have anti-harassment policies and procedures that comply with Equal Employment Opportunity Commission (EEOC) guidance and (2) collect and use data on harassment complaints.

Related to our first objective, we collected current and draft anti-harassment policies and procedures from the Department and the 10 OAs, if available. Based on what we collected and interviews with officials from the Departmental Offices of Civil Rights and Human Resources Management, and each of the OAs, we determined that most OAs were waiting on the Department to finalize its *Policy Framework* before drafting or finalizing their own draft policies and procedures. Therefore, we focused our analysis on the extent to which the Department’s

Secretarial Policy Statement and *Policy Framework* complied with EEOC guidance. To do so, we reviewed laws, regulations, and guidance, including Title VII of the Civil Rights Act of 1964, No FEAR Act of 2002, Americans with Disabilities Act of 1990 (ADA), Age Discrimination in Employment Act of 1967, Genetic Information Nondiscrimination Act of 2008; 15 Executive Orders pertaining to civil rights and the powers of the EEOC, Management Directive 715 (MD-715) and its implementation instructions, *Model EEO Programs Must Have an Effective Anti-Harassment Program*, *Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors*, *The Law of Harassment: Assisting Agencies in Developing Effective Anti-Harassment Policies*, and EEOC's anti-harassment policy checklists. Based on these criteria, we compiled a checklist of required and recommended items and used it to assess the DOT and OA anti-harassment program policies and procedures (see exhibits D and E). We validated this checklist through interviews with EEOC staff.

Finally, we compared our checklist of EEOC requirements to the *Secretarial Policy Statement on the Prevention of Harassment*, issued April 24, 2018, which was the current policy during our audit and the September 2018 draft version of *DOT's Policy Framework for the Prevention of Harassment and Unprofessional Conduct*. We shared the results of our analysis with Department officials on February 13, 2019, who told us a new draft version of the *Policy Framework* addressed our concerns. We compared this draft, received on February 14, 2019, to the checklist, and shared a summary of our analysis with the Department on May 14, 2019. In response, the Department provided an updated draft version of the *Policy Framework*, dated May 20, 2019. We evaluated this version and shared the results with DOT officials. On May 30, 2019, we received a revised draft *Policy Framework*. As before, we evaluated this version and shared our results with the Department that same day. On June 7, 2019, the Department provided a final draft of the *Policy Framework*, dated June 6, 2019, that closed all of the previously identified gaps. The Department issued this version of the *Policy Framework* on June 21, 2019. Exhibit D presents the results of our analysis of each version of the draft policy framework.

Related to our second objective—to assess the extent to which the Department and its OAs collect and use data on harassment complaints—we identified criteria related to data collection and use in EEOC's MD-715, part G, and the Government Accountability Office's *Standards for Internal Control in the Federal Government*. We conducted interviews with employee labor relations and civil rights staff at the departmental and OA levels to understand the roles of stakeholders in their anti-harassment programs; process of receiving and addressing harassment allegations; process for documenting, tracking and closing harassment cases; data collection statistics, such as when records were started, number of allegations in a year, the categories of information collected, and the reports generated; and how the complaint data informed anti-harassment activities. We

requested redacted and sample trackers from the Department and the OAs to evaluate the categories of monitored information. Using the criteria identified and the evidence collected through the interviews and trackers, we evaluated the Department and OAs based on the type of tracker utilized, the data fields collected, and whether they analyzed the data collected to identify significant trends.

Exhibit B. Organizations Visited or Contacted

DOT Offices

Departmental Office of Civil Rights, Washington, DC

Departmental Office of Human Resource Management, Washington, DC

Office of the Secretary of Transportation, Washington, DC

DOT Operating Administrations

Federal Aviation Administration (FAA), Washington, DC

Federal Highway Administration (FHWA), Washington, DC

Federal Motor Carrier Safety Administration (FMCSA), Washington, DC

Federal Railroad Administration (FRA), Washington, DC

Federal Transit Administration (FTA), Washington, DC

Maritime Administration (MARAD) Washington, DC

National Highway Traffic Safety Administration (NHTSA), Washington, DC

Pipeline and Hazardous Materials Safety Administration (PHMSA),
Washington, DC

Saint Lawrence Seaway Development Corporation (SLSDC), Washington, DC

Other Organizations

Office of Federal Operations, U.S. Equal Employment Opportunity Commission

Exhibit C. List of Acronyms

DOCR	Departmental Office of Civil Rights
DOT	Department of Transportation
EEOC	Equal Employment Opportunity Commission
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
MARAD	Maritime Administration
NHTSA	National Highway Traffic Safety Administration
OA	Operating Administration
OIG	Office of Inspector General
OST	Office of the Secretary of Transportation
PHMSA	Pipeline and Hazardous Materials Safety Administration
SLSDC	Saint Lawrence Seaway Development Corporation
USMMA	U.S. Merchant Marine Academy

Exhibit D. DOT's Secretarial Policy Statement and Policy Framework: Compliance with EEOC Guidance

#	EEOC Guidance Policy Item	Required	Secretarial Policy Statement	Draft Policy Framework September 2018	Draft Policy Framework February 14, 2019	Draft Policy Framework May 20, 2019	Draft Policy Framework May 29, 2019	Issued Policy Framework, June 21, 2019
<i>Shaded rows are requirements.</i>								
1	Has the Department/OA issued policy for addressing harassment?	Yes	Yes	No	No	No	No	Yes
2	Does the anti-harassment policy clearly assure employees the Department/OA will stop harassment before it becomes a violation of Federal law?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3	Does the anti-harassment policy establish a firewall between the anti-harassment coordinator and the EEO Director, for example, by assigning the investigative function to the EEO office and decisions on corrective action to a separate office?	Yes	No	No	No	Yes	Yes	Yes
4	Does the anti-harassment policy clearly explain prohibited conduct; for example, does it include easy-to-understand descriptions or examples?	Yes	No	Yes	Yes	Yes	Yes	Yes
5	Does the anti-harassment policy include an unequivocal statement that the organization will not tolerate harassment based on any protected characteristic (race, color, gender (gender identity and sexual orientation), age (40 or older), national origin, disability, religion, and genetic information)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6	Does the anti-harassment policy's legal definition of harassment align with EEOC's definition?	No	Yes	Yes	Yes	Yes	Yes	Yes

#	EEOC Guidance Policy Item	Required	Secretarial Policy Statement	Draft Policy Framework September 2018	Draft Policy Framework February 14, 2019	Draft Policy Framework May 20, 2019	Draft Policy Framework May 29, 2019	Issued Policy Framework, June 21, 2019
<i>Shaded rows are requirements.</i>								
7	Does the policy's prohibition on harassment in the workplace cover harassment by supervisors?	No	No	Yes	Yes	Yes	Yes	Yes
8	Does the policy's prohibition on harassment in the workplace cover harassment by coworkers?	No	No	Yes	Yes	Yes	Yes	Yes
9	Does the policy's prohibition on harassment in the workplace cover harassment by non-employees?	No	No	Yes	Yes	Yes	Yes	Yes
10	Does the anti-harassment policy include language that ensures the EEO office will inform the anti-harassment program about all EEO counseling related to allegations of harassment?	Yes	No	No	No	No	Yes	Yes
11	Does the anti-harassment policy or procedure instruct supervisors and managers to address complaints of harassment or report them to the appropriate staff, whether or not they are officially designated to take complaints?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
12	Does the anti-harassment policy or procedure instruct supervisors and managers to address or report complaints of harassment to the appropriate officials, whether or not a complaint was framed in a way that conforms to the organization's complaint procedures?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
13	Does the anti-harassment policy address all claims of harassment whether or not an EEO complaint is filed in the same matter?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
14	Does the anti-harassment policy describe the complaint process, including identifying which agency officials can receive harassment claims?	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	EEOC Guidance Policy Item	Required	Secretarial Policy Statement	Draft Policy Framework September 2018	Draft Policy Framework February 14, 2019	Draft Policy Framework May 20, 2019	Draft Policy Framework May 29, 2019	Issued Policy Framework, June 21, 2019
<i>Shaded rows are requirements.</i>								
15	Does the anti-harassment policy designate at least one official outside each employee's chain of command to receive claims of harassment?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
16	Does the anti-harassment policy state that the complaint system will provide a prompt, thorough, and impartial investigation?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
17	Does the anti-harassment policy encourage employees to report harassment before it becomes severe or pervasive?	No	No	Yes	Yes	Yes	Yes	Yes
18	Does the anti-harassment policy state that the reporting system is available to both those who have experienced and those who have observed harassment?	No	No	Yes	Yes	Yes	Yes	Yes
19	Does the anti-harassment policy contain information about the timeframes for filing charges of unlawful harassment with the EEO office or State fair employment practice agencies, including that the deadline is calculated from the last date of unlawful harassment, not from the date that the complaint is resolved?	No	Yes	Yes	Yes	Yes	Yes	Yes
20	Does the anti-harassment policy assure immediate and appropriate corrective action in confirmed cases of harassment, including disciplining or removing the employees or managers involved, regardless of whether the conduct violated the law?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
21	Does the anti-harassment policy contain provisions that protect, to the extent possible, the confidentiality of individuals bringing claims of harassment?	Yes	Yes	Yes	Yes	Yes	Yes	Yes

#	EEOC Guidance Policy Item	Required	Secretarial Policy Statement	Draft Policy Framework September 2018	Draft Policy Framework February 14, 2019	Draft Policy Framework May 20, 2019	Draft Policy Framework May 29, 2019	Issued Policy Framework, June 21, 2019
<i>Shaded rows are requirements.</i>								
22	Does the policy contain provisions that protect, to the extent possible, the confidentiality of witnesses who provide information about harassment claims?	No	Yes	Yes	Yes	Yes	Yes	Yes
23	Does the anti-harassment policy contain provisions that protect, to the extent possible, the confidentiality of the target of the complaint?	No	Yes	Yes	Yes	Yes	Yes	Yes
24	Does the anti-harassment policy state that complainants who provide information concerning harassment claims will be protected from retaliation?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
25	Does the anti-harassment policy state that witnesses who provide information concerning harassment claims will be protected from retaliation?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
26	Does the anti-harassment policy state that any employee who retaliates against any individual who submits a report or provides information regarding a report will be disciplined appropriately?	No	No	Yes	Yes	Yes	Yes	Yes
27	Does the anti-harassment policy provide for periodic training to all managers and supervisors on the policy and related procedures, including the staff's role in the complaint process?	Yes	No	Yes	Yes	Yes	Yes	Yes
28	Does the anti-harassment policy provide for periodic training to all employees on the policy and complaint procedures?	Yes	No	Yes	Yes	Yes	Yes	Yes

Source: OIG analysis of EEOC guidance, DOT Secretarial Policy Statement, and Policy Framework

Exhibit E. OIG Checklist for Evaluating Anti-Harassment Procedures

#	EEOC Guidance Procedure Item	Required
<i>Shaded rows are requirements.</i>		
1	Has the Department/OA issued procedures for addressing harassment that are separate from the EEO process?	Yes
2	Does the anti-harassment procedure clearly explain prohibited conduct; for example, does it include easy-to-understand descriptions or examples?	Yes
3	Does the anti-harassment policy or procedure instruct supervisors and managers to address complaints of harassment or report them to the appropriate staff, whether or not they are officially designated to take complaints?	Yes
4	Does the anti-harassment policy or procedure instruct supervisors and managers to address or report complaints of harassment to the appropriate officials, whether or not a complaint was framed in a way that conforms to the organization's complaint procedures?	Yes
5	Does the anti-harassment procedure state that the complaint system will provide a prompt, thorough, and impartial investigation?	Yes
6	Does the anti-harassment procedure include steps that provide for a prompt, thorough, and impartial investigation (e.g., the investigation process must begin within 10 days of receiving the complaint)?	Yes
7	Does the anti-harassment policy or procedure identify the investigation process, including where to file the complaint, who will conduct the investigation, and who will make the decision for corrective action?	No
8	Does the anti-harassment procedure contain information about the timeframes for filing charges of unlawful harassment with the EEO office or State fair employment practice agencies, including that the deadline is calculated from the last date of unlawful harassment, not from the date that the complaint is resolved?	No
9	Does the anti-harassment procedure include steps to protect the confidentiality of individuals bringing harassment claims?	Yes
10	Does the anti-harassment procedure include steps to protect the confidentiality of witnesses who provide information about harassment claims?	No
11	Does the anti-harassment procedure include steps to protect the confidentiality of target of the complaint?	No
12	Does the anti-harassment procedure state that complainants who provide information concerning harassment claims will be protected from retaliation?	Yes
13	Does the anti-harassment procedure state that witnesses who provide information concerning harassment claims will be protected from retaliation?	Yes
14	Does the anti-harassment procedure state that any employee who retaliates against an individual who submits, or provides information regarding, a report will be disciplined appropriately?	No

Source: OIG analysis of EEOC guidance

Exhibit F. Major Contributors to This Report

TIFFANY MOSTERT

PROGRAM DIRECTOR

DAWN FRATRIN

PROJECT MANAGER

JASON BEACH

ANALYST

ALLIE CLEAVER

ANALYST

TONI JAFFIER

INTERN

CLAIRE ZAUTKE

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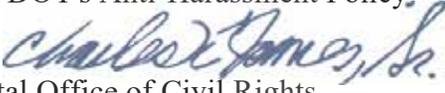
WRITER-EDITOR

Appendix. Agency Comments

Memorandum

**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

Subject: Department of Transportation's Management Response to
OIG Draft Report on DOT's Anti-Harassment Policy. Date: August 28, 2019

From: Charles E. James, Sr.  Director, Departmental Office of Civil Rights Reply to
Attn. of:

To: Barry DeWeese
Assistant Inspector General for Surface Transportation Audits

The Department of Transportation (DOT), Office of the Secretary (OST), is committed to achieving the goal of a workplace free from harassing conduct and providing procedures for receiving and resolving allegations of harassing conduct. OST is taking all steps necessary to prevent harassing conduct in the workplace and correct any inappropriate conduct that occurs before it becomes severe or pervasive. As the OIG acknowledged in its draft report, OST's new anti-harassment policy fully complies with the U.S. Equal Employment Opportunity Commission's (EEOC) requirements.

Based on our review of the draft report, we concur with the recommendation to collect and review each OA's anti-harassment program procedures and require revisions, as necessary, to bring them into compliance with DOT's policy and EEOC requirements. OST's anti-harassment policy requires that the OAs provide their anti-harassment procedures to OST for review and evaluation. OST plans to complete actions to implement this recommendation by December 31, 2019.

We appreciate the opportunity to respond to the OIG draft report. Please contact, Yvette Rivera, Associate Director, at 202-366-5131, with any questions or if you would like to obtain additional details.

U.S. DOT IG Fraud & Safety Hotline

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Our Mission

OIG conducts audits and investigations on behalf of the American public to improve the performance and integrity of DOT's programs to ensure a safe, efficient, and effective national transportation system.

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U.S. Department of Transportation
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