



DEPARTMENT OF HOMELAND SECURITY
EMERGENCY PREPAREDNESS AND RESPONSE DIRECTORATE
Federal Emergency Management Agency

	Date	Number	
INSTRUCTION	September 18, 2003	1440.3	ER

**Equal Opportunity in Federally Conducted Education
and Training Programs**

1. **Purpose.** This instruction implements Executive Order (EO) 13160, "Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs," issued on June 23, 2000.

2. **Applicability and Scope.** The provisions of this instruction apply to all education and training programs conducted by the Department of Homeland Security (DHS), Emergency Preparedness and Response (EP&R), Federal Emergency Management Agency (FEMA), field installations, regional offices, and Disaster Field Offices.

3. **Authorities.**

- a. Rehabilitation Act of 1973, as amended, Sections 501, 504 and 508;
- b. Age Discrimination in Employment Act of 1967;
- c. Civil Rights Act of 1964, Titles VI and VII;
- d. Education Amendments of 1972, Title IX;
- e. Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, Section 308.

4. **References.**

- a. EO 13160, "Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs," June 23, 2000;

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b. Department of Justice, EO 13160 Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs, Federal Register: January 18, 2001 (Volume 66, Number 12), pp. 5397-5410;

c. EO 11478, as amended, Equal Employment Opportunity in the Federal Government;

d. FEMA Instruction 1420.1, Access to Agency Programs and Activities by Persons with Disabilities, dated August 11, 1994;

e. FEMA Manual 1430.1, Reasonable Accommodations for the Federal Emergency Management Agency, dated August 22, 2001;

f. FEMA Manual 1440.2, Civil Rights Monitoring and Enforcement Program, dated February 26, 2003.

5. Policy. All individuals involved in federally conducted education or training programs or activities must be treated equally and not be subjected to discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent. Such groups have a protected status under the EO. will maintain a learning environment that is free of discrimination on the basis of any or all of these protected factors. Education and training programs include: courses taught by EP&R/FEMA staff or contractors from the Emergency Management Institute or National Fire Academy, extracurricular activities, occupational training, web based training, scholarships, internships and fellowships, and teacher training programs.

EP&R/FEMA education and training programs may not retaliate against any individual because he or she has raised concerns, reported claims, or filed complaints alleging discrimination. EP&R/FEMA is similarly prohibited from retaliating against any individual who has testified, assisted, or participated in any manner in an investigation or other proceeding raising claims of discrimination.

The EO does not apply to, affect, interfere with, or modify the operation of any otherwise lawful affirmative action plan or program. An individual shall not be deemed subject to discrimination by virtue of his or her exclusion from the benefits of a program established consistent with federal law or limited by federal law to individuals of a particular protected group. For example, courses delivered by EP&R/FEMA for tribal governments would be exempt from the provisions of the EO insofar as the makeup of the student body is concerned.

6. Responsibilities.

a. The Undersecretary, EP&R/FEMA, is responsible for ensuring that Agency educational and training programs are in compliance with the provisions of the EO.

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b. Assistant Directors, Administrators, Regional Directors, and Office Directors are responsible for ensuring all relevant aspects of their respective programs and activities are in compliance with the provisions of this instruction.

c. The Director, Office of Equal Rights (OER), is responsible for the following:

(1) Providing organizational elements advice, guidance, and technical assistance concerning requirements of the EO;

(2) Reviewing for concurrence all proposed Agency directives and similar issuances applicable to EP&R/FEMA education and training programs to ensure their consistency with the objectives of this instruction;

(3) Establishing procedures for enforcement of the EO, including the processing of complaints, the conduct of investigations, and recommendation of corrective action should discrimination be found;

(4) Providing reports to the Assistant Attorney General for Civil Rights as required by Section 6 of the EO;

(5) Providing training to headquarters, field establishments and regional staffs on the provisions of the EO; and

(6) Providing appropriate posters, pamphlets, and other information to staff in meeting the provisions of the EO.

7. Administrative Enforcement.

a. Consolidation of Complaints by EP&R/FEMA Employees. To promote the consistent and effective enforcement of equal employment opportunity mandates for all federal employees, and to preserve the integrity of statutorily protected equal employment opportunity rights, complaints filed by EP&R/FEMA employees under both this EO and existing equal employment opportunity laws should be consolidated and processed under the relevant equal employment opportunity statutes (i.e., Title VII, sections 501,504 and 508, and/or the ADEA). This approach will not only provide a streamlined procedure for resolving complaints, but will also protect an aggrieved employee's opportunity to recover any monetary damages that are available under the EEO statutes but not under the EO.

A EP&R/FEMA employee seeking to file a complaint under this EO must indicate whether the complaint is related to his or her employment and, if so, whether he or she has filed any other EEO claims arising out of the same circumstances. If so, the complaint filed under this EO shall be treated as an EEO matter to be handled by OER. If a federal employee chooses to proceed solely under the EO, the enforcement procedures set forth below will govern the disposition of his or her complaint.

b. Claims filed by other Federal employees. Federal employees participating as members of the general public in an EP&R/FEMA conducted education program will be subject to the same enforcement procedures as members of the general public. For example, if an employee of the Department of Justice participates in a FEMA training course, the employee may choose to file an EO 13160 claim with EP&R/FEMA's Office of Equal Rights. However, the employee can choose the alternative of filing an EEO complaint at the Department of Justice, if the Department's EEO procedures provide for the filing of such a complaint.

If a federal employee indicates that he or she has not filed any other EEO claims at the time of filing a complaint under the EO, the employee may still file a related claim under Title VII, section 504, the ADEA, or EO 11478. To do so, the employee must follow the appropriate EEO filing procedures, including contacting an EEO counselor and filing the complaint within the relevant statutory time limit. In such cases, the employee should notify OER that he or she has decided to contact an EEO counselor and file a related EEO claim.

c. Notice. The Agency shall prepare outreach materials to ensure that all individuals involved in federally conducted education and training programs are aware of EO 13160 and are advised as to the proper procedures for filing complaints. These outreach materials should provide individuals with specific information, including, but not limited to, the general anti-discrimination mandates of EO 13160, timelines for filing complaints, the name(s) and address(es) of the office(s) to which such complaints should be sent, and specific procedures established by EP&R/FEMA regarding the processing of complaints.

Outreach materials will provide clear instructions to federal employees regarding their respective rights under EO 13160 and Title VII, sections 501/504, the ADEA, and EO 11478. Specifically, outreach materials will clearly state the differing timelines for filing claims under the EO and these three statutes, as well as the availability (or unavailability) of different remedies. Federal employees should be clearly advised that claims filed under both the EO and an equal employment opportunity statute will be processed only under the relevant statute (or under EO 11478).

d. Filing a Complaint. Any individual who believes him or herself to be aggrieved by a violation of EO 13160 or its implementing regulations, rules, policies or guidance, may, personally or through a representative, file a written complaint with EP&R/FEMA. All written complaints should be filed with OER.

(1) Complaints. In order to be accepted, all written complaints must be "complete complaints." A complete complaint must:

- (a) Include the name, address, and phone number of the complainant.
- (b) Identify whether the complainant is a federal employee and employing agency.
- (c) Identify whether the complainant's involvement in the relevant education program was related to his or her employment.
- (d) Describe the alleged discriminatory conduct in sufficient detail to inform EP&R/FEMA as to the nature and approximate date of the alleged violation; and,
- (e) Be signed and dated by the complainant or complainant's representative.

(2) Time Limits for Filing Complaints. As a general matter, all complaints must be filed within 180 days of the alleged discrimination. However, OER may extend this time limit:

- (a) If the complainant can demonstrate that he or she had no notice of the time limit and was not otherwise aware of it; or
- (b) If the complainant can demonstrate that he or she was prevented by circumstances beyond his or her control from submitting the complaint in a timely fashion; or
- (c) For other reasons, or under other circumstances, considered sufficient by the agency. For purposes of determining when a complaint is timely filed, a complaint mailed to the Agency will be deemed filed on the date that it is postmarked. Any other complaint will be deemed filed on the date that it is received by OER.

If a complaint is filed within 180 days of the alleged discrimination, but the Agency subsequently determines that the complaint is not a "complete complaint," the complainant's claims shall nevertheless be deemed filed in a timely manner, and the complainant shall be given appropriate opportunity to amend his or her original complaint.

(3) Class Complaints. Any individual who believes that any specific class of persons has been subjected to discrimination prohibited by EO 13160 or any of its implementing regulations, rules, policies, or guidance, may file a class complaint with OER, provided that individual is either a member of the allegedly aggrieved class of persons or a representative of a member of the allegedly aggrieved class of persons.

(4) Legal Representation. Any individual filing a complaint under EO 13160 or any of its implementing regulations, rules, policies, or guidance may be represented and assisted in all stages of these proceedings by an attorney or representative of his or her own choosing. An individual has a responsibility to promptly inform the agency if legal counsel is retained. In addition, an individual has an obligation to notify OER if he or she wishes to have any other representative included in these proceedings. It is the responsibility of the complainant to provide OER with the name, address, and phone number of any attorney or other representative. In addition, it is an ongoing responsibility of the complainant to advise OER as to any changes with respect to the status of his or her legal and/or non-legal representation in any proceeding under this EO or any of its implementing regulations, rules, policies, or guidance.

e. Initial Review by OER. Upon receipt of a complaint filed under this EO, OER must assess the complaint and determine how to proceed. OER will consider whether the complaint is a complete complaint, whether it was filed in a timely manner, and, in the case of a federal employee, whether the complaint should be consolidated with another complaint and transferred, if necessary, to that employee's EEO office.

After reviewing the complaint, OER may need to obtain additional information from the complainant. For example, OER may ask the complainant to supply additional information if the complaint is not complete. Additional information also may be required by OER to determine whether to waive the time limits for filing a complaint or consolidate and transfer a federal employee's claim. If a complainant fails to provide additional information, or otherwise respond to OER's request within 30 days, without good cause shown, OER may dismiss the complaint.

In certain instances, OER may determine that a complaint should be dismissed because the alleged discriminatory conduct did not occur in a federally conducted education or training program. In such cases, OER will issue a brief written determination setting forth the basis for the dismissal and advising the complainant of his or her right to appeal this decision to the Attorney General for a final determination regarding coverage pursuant to Section 2-203 of the EO.

f. Informal Resolution. Before undertaking a formal investigation, OER will pursue resolution of all complaints filed under this EO through efforts to achieve voluntary compliance. OER will make use of alternative dispute resolution techniques whenever appropriate.

If an informal resolution of a complaint between a complainant and respondent cannot be reached within a reasonable period of time (generally 45 days), or if efforts to achieve an informal resolution appear to become futile, OER will initiate a formal investigation. However, efforts to achieve voluntary compliance should be undertaken whenever possible and should continue throughout the course of a formal investigation if and when appropriate opportunities arise.

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g. Formal Investigation. If a decision is made to initiate a formal investigation, OER must notify the complainant in writing. OER will attempt to complete the investigation within 180 days of the Agency's receipt of a complete complaint. The investigation should include a thorough review of the circumstances under which the alleged discrimination occurred and any other circumstances which may constitute, or appear to constitute, discrimination against the complainant.

A formal investigation may require the cooperation and participation of other Agency employees. Employees who are required by OER to participate in any investigation concerning violations of this EO will do so as part of their official duties and during the course of regular working hours.

Upon completion of a formal investigation, OER must prepare a written report setting forth the results of the investigation. If the complainant is an EP&R/FEMA employee, the report will be prepared by the EEO Complaints Manager; if the complainant is a member of the public or employee of another Federal agency, the report will be completed by the Civil Rights Program Manager. The report will set forth conclusions as to whether the EO has been violated, together with an analysis of the facts supporting the finding. If the report concludes that any agency employee has not complied with the EO or any of its implementing rules, regulations, policies, or guidance, OER will refer a copy of the report and any relevant findings or supporting evidence to the Undersecretary, Emergency, Preparedness and Response (EP&R), Federal Emergency Management Agency (FEMA). OER also may make recommendations for any corrective and/or remedial action. A copy of the investigative report should be sent to both the complainant and the respondent, including the employee who is the subject of the report.

If a determination is made that there has been no violation of the EO or any of its implementing rules, regulations, policies, or guidance, a copy of the report also shall be sent to both the complainant and the respondent. In such cases, although no action is required, a copy of the report should nevertheless be sent to the Undersecretary, EP&R/FEMA.

h. Referral to the Undersecretary, EP&R/FEMA. Upon receipt of a report from OER that indicates there has been a violation of the EO or its implementing rules, regulations, policies, or guidance, the Undersecretary, EP&R/FEMA shall review the report and all relevant supporting material in order to determine what, if any, disciplinary action is appropriate. Any action taken to discipline an employee, including removal, must be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978. The Undersecretary, EP&R/FEMA, also shall review the OER report in order to determine whether any corrective or remedial action should be initiated. Nothing in the EO authorizes monetary relief to the complainant as a form of remedial or corrective action. If the Undersecretary does determine that the complainant is entitled to some form of remedial or corrective action, the Undersecretary

shall so notify the complainant in writing. The Under Secretary also shall take all necessary steps to ensure that the corrective or remedial action ordered is implemented. If a determination is made that the complainant is not entitled to any corrective or remedial action, the Under Secretary shall notify the complainant of this decision and the reasons for this determination.

i. Remedies. As a general matter, if there has been a violation of the EO, the complainant shall be entitled to all appropriate, non-monetary, equitable relief. The Under Secretary, EP&R/FEMA should attempt to ensure that the aggrieved individual ends up in the same position he or she would have occupied absent discrimination, or a substantially equivalent position. In the context of violations of this EO, specific remedies are likely to include placement in the next available education or training program of a comparable nature; the development of an individualized training opportunity; the cancellation of an unwarranted personnel action or the expungement of adverse materials from agency records; the awarding of a diploma, other certificate, or specific grade; and the provision of reasonable accommodations.

EP&R/FEMA will ensure that sufficient authority exists to provide all appropriate forms of relief. Complainants should be aware that the EO specifically provides that the Order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at or by law by a party against the United States, its agencies, its officers, or its employees. Actions taken pursuant to the EO, however, are open to judicial review of final decisions in accordance with the Administrative Procedures Act, 5 U.S.C. 701, et seq.

8. Reporting Requirements. For the first three years following issuance of the EO, the Office of Equal Rights shall file annual reports with the Assistant Attorney General for Civil Rights that summarize the number, nature, and disposition of complaints filed under the EO. Such reports are to be submitted within 90 days of the end of the preceding year's activities. Subsequent reports are to be submitted every three years and within 90 days of the end of each three-year period.



Michael D. Brown
Under Secretary