DENALI COMMISSION

Memorandum for Denali Commission Employees

From: Jason Hoke, Federal Co-Chair

Re: Prevention and Elimination of Harassing Conduct in the Workplace

Implementation Date: April 2019

1. **PURPOSE.** This Memo establishes policies and procedures to help the Denali Commission maintain a workplace free from unlawful harassment. It defines harassing conduct that violates this Memo, outlines the rights and responsibilities of employees, requires periodic training on harassment and establishes a system of accountability for ensuring a workplace free from unlawful harassment. Unlike other forms of discrimination, harassment is typically cumulative in nature: one offensive remark will seldom be illegal, but can become illegal if similar incidents are allowed to recur. These procedures ensure that appropriate officials are notified of, and have the opportunity to promptly correct hostile or abusive conduct that is, or has the potential to become, so severe or pervasive as to constitute a legal claim of harassment. This Memo is a part of The Denali Commission's ongoing efforts to provide a model workplace for its employees.

2. **AUTHORITY.** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16; the Age Discrimination in Employment Act, 29 U.S.C. § 633a; the Rehabilitation Act, 29 U.S.C. § 791(g); the Civil Service Reform Act, 5 U.S.C. § 2302(b)(10); the Notification and Federal Employee Antidiscrimination and Retaliation Act [P.L. 107-174], the Genetic Information Nondiscrimination Act of 2008 [42 U.S.C. 2000ff, et seq], Executive Memo 11478, as amended May 28, 1998; EEOC Memo No. 501.004, as amended February 24, 1992.

3. **DENALI COMMISSION POLICY.**

   a. **Zero Tolerance for Harassment, Discrimination, and Retaliation.** It is the policy of the Denali Commission to maintain a model workplace free from harassment and other forms of discrimination based on race, color, religion, sex, national origin, age, disability, sexual orientation and genetic information. Accordingly, the Denali Commission has zero tolerance for harassment or any other form of unlawful discrimination.

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In addition, the Denali Commission will not tolerate retaliation against any employee for reporting matters under this policy or procedure or for assisting in any inquiry about such a report.

b. Definition of Unlawful Harassment.
Unlawful harassment includes unwelcome intimidation, ridicule, insult, comments, or physical conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, or retaliation where:

(1) an employee's acceptance or rejection of such conduct explicitly or implicitly forms the basis for an employment decision affecting the employee; or
(2) the conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges of the employee's employment, otherwise create an abusive work environment. This type of harassment typically does not involve discreet personnel actions such as denial of promotion.

c. Conduct Covered By this Memo. The conduct covered by this policy is broader than the legal definition of unlawful harassment listed above. It includes hostile or abusive conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, genetic information, or retaliation, even if the conduct has not risen to the level of illegality. This is because the goal of this Memo is to avoid – or, at least, limit – harm to any employee subjected to unwelcome hostile or abusive conduct based on a protected characteristic by ensuring that appropriate officials are notified of – and have the opportunity to promptly correct – such conduct before it becomes so severe or pervasive as to violate the law, or as soon as possible thereafter.

4. RESPONSIBILITIES

a. The Federal Co-Chair, through his/her designee, is responsible for:

(1) Disseminating this Memo to all employees on an annual basis and periodically reminding employees of their responsibilities under this Memo.

(2) Developing and providing periodic training for all employees on this Memo and its requirements.

(3) Developing a performance measure in compliance with this Memo; Ensuring that performance plans of all supervisors and managers include a performance measure addressing compliance with this Memo; and Ensuring that supervisors and managers are appropriately rated on the measure.

(4) Receiving reports alleging violations of the Memo and, as described in section 8 of this Memo, making or directing further inquiries into such reports, as appropriate and necessary.

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(5) Providing oversight, technical assistance, and support to Denali Commission staff to assure compliance with this Memo.

(6) Maintaining a written record of reports made and actions taken pursuant to this Memo. These records will be maintained in a secure location.

(7) The Office of Civil Rights at the Department of Commerce (OCR-DOC) provides EEO support for the Denali Commission. DOC OCR may be reached at (202) 482-0625 or (202) 482-4993. The serving EEO Officer for the Denali Commission is Bernadette Worthy (bworthy@doc.gov) at (202) 482-8121. Information about all DOC OCR's programs may be found at http://www.osec.doc.gov/ocr/.

b. All Denali Commission staff are expected to:

(1) Understand their rights and responsibilities under this Memo;

(2) Participate in the periodic training required by this Memo;

(3) Refrain from engaging in hostile or abusive conduct:

(4) Report hostile or abusive conduct by employees or others in the workplace;

(5) Inform the supervisor of the offending employee, a management official, or the Federal Co-Chair if subjected to unwelcome hostile or abusive conduct; and

(6) Fully cooperate in an inquiry or investigation.

c. Supervisors and other Management Officials must:

(1) Ensure a workplace free of illegal harassment;

(2) Ensure that their subordinates are aware of this Memo and its requirements;

(3) Act promptly and effectively to stop hostile or abusive conduct of which they are aware;

(4) Notify appropriate officials of reported or observed harassing conduct and of their efforts to correct the conduct;

(5) Appropriately evaluate subordinate supervisors and managers of their performance under this Memo.

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5. PROCEDURES.

a. Reporting Hostile or Abusive Conduct.

(1) Any employee who has been subjected to unwelcome hostile or abusive conduct is encouraged to inform the person(s) responsible for the conduct that it is unwelcome and offensive, and request that it cease. If the conduct continues, or if the employee is uncomfortable confronting the responsible person(s) about the conduct, s/he should report the matter to:

(a) the supervisor of the employee engaging in the hostile or abusive conduct
(b) another supervisor or other management official; or
(c) the Federal Co-Chair.

(2) Employees who know of hostile or abusive conduct directed at others are encouraged to report the matter to the supervisor of the offending employee, another supervisor or other management official, or to the Federal Co-Chair.

(3) Employees may obtain information about this policy, or report hostile or abusive conduct to the their supervisor, the Denali Commission General Counsel or the Federal Co-Chair.

NOTE: Reports made pursuant to this Memo do NOT replace, substitute, or otherwise satisfy the separate obligations of an EEO complaint, negotiated grievance, Merit Systems Protection Board appeal, or other statutory process. Unlike this Memo, those procedures typically provide for remedial relief to the victims of a violation. For further information concerning how an employee may pursue rights under one of these separate processes, see Section 6 of this Memo.

b. Management Response to Harassment Reports.

(1) **Conducting Preliminary Inquiries.** A supervisor or manager who receives a report of, or otherwise becomes aware of, hostile or abusive conduct involving subordinates within her/his chain-of-command must determine:

(a) what conduct is at issue and whether it arguably could be considered hostile or abusive;

(b) who may be involved;

(c) whether any immediate corrective action is required to insulate the alleged victim from further hostile or abusive conduct; and

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(d) what action is necessary and appropriate to otherwise address the report.

(2) **Notifying Appropriate Officials of Report.**

(a) A supervisor or manager who becomes aware of allegedly hostile or abusive conduct involving employees outside of his/her chain of-command must, within one business day, notify the following appropriate officials:

--The alleged harasser's supervisor and General Counsel or, if the conduct implicates the supervisor or the General Counsel, the Federal Co-Chair; and

--The victim's supervisor and General Counsel or, if the conduct implicates the supervisor or the General Counsel, the Federal Co-Chair.

(b) Supervisors and managers who become aware of hostile or abusive conduct within their chain-of-command must, no later than one business day following receipt of the report, notify the Federal Co-Chair. This notification must include a description of any initial steps taken in response to the conduct and a plan of necessary and appropriate action to address the report.

(c) When a report is made directly to the Federal Co-Chair, he/she shall:

--Immediately acknowledge receipt of the report;

--Notify the Office implicated in the report;

--Require the Office implicated in the report to immediately conduct a preliminary in inquiry and take any other necessary and appropriate action.

c. **Performing Further Investigation.**

(1) **Deciding whether further investigation is necessary**. The Federal Co-Chair shall have sole discretion to decide whether further investigation is required, or if the preliminary inquiry is sufficient to determine whether corrective action is necessary. These decisions are fact specific, and must be made on a case-by-case basis.

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(2) **Deciding how investigations will be carried-out.** When the Federal Co-Chair determines that further investigation is necessary:

(a) The Federal Co-Chair's and the affected Office shall, by agreement, determine who will direct further investigations. The Federal Co-Chair may engage management officials from outside the involved office, or an outside investigative service if s/he deems it necessary and appropriate.

(b) The investigation must be conducted swiftly, impartially, and in a manner appropriate to the allegation.

d. Resolving Conflicts of Interest in Inquires or Investigations.

If a high ranking official is implicated in the potentially harassing conduct, the Federal Co-Chair shall be responsible for conducting the preliminary inquiry and directing any further investigation that is warranted.

e. Taking Corrective Actions. If it is determined that unwelcome hostile or abusive conduct occurred, corrective action will be necessary.

(1) To determine the appropriate corrective action, the Supervisors/Managers implicated in the report will consult with the Federal Co-Chair. The action necessary will depend on the severity and/or pervasiveness of the offense, any response required by this Memo to end such conduct, the offender's disciplinary/conduct history, and other surrounding circumstances. A non-exclusive list of possible corrective actions follows:

(a) If the conduct consisted of only occasional remarks that are arguably offensive but not severe, corrective action may consist of no more than discussing the matter with the responsible individual(s), explaining why it was inappropriate, and instructing them that it should not continue.

(b) If more than one person has engaged in inappropriate but not severe conduct, if there is other evidence that employees are not sure about what conduct is appropriate and permissible, or if employees appear unaware of how to properly respond to such conduct, appropriate training should be provided.

(c) If the conduct is more severe or pervasive, including frequent offensive remarks, touching, or other egregious harassing behavior, the employee responsible for the hostile or abusive conduct should be separated from the victim, at least until the matter otherwise can be

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resolved. This should not be accomplished by transferring the employee who reported or otherwise was the victim of hostile or abusive conduct. If the victim, without having been asked or prompted, specifically requests such a transfer, management should inform the employee that s/he need not leave, and that instead the employee responsible for the hostile or abusive conduct may be transferred. Nonetheless, to the extent possible, the victim's request should be honored.

(d) For the most serious incidents, corrective action may include any disciplinary action otherwise available for violations of conduct standards, such as suspension, demotion, or termination.

(2) Appropriate corrective action, disciplinary or otherwise, up to and including removal will be taken against any supervisor or other management official who fails to perform her/his obligations as set forth in this Memo, including any unreasonable failure to report known violations of this policy.

f. Maintaining Confidentiality, Keeping Records, and Monitoring Compliance

(1) **Maintaining Confidentiality.** All reports of hostile or abusive conduct and related information will be maintained on a confidential basis to the greatest extent possible. The identity of the employee alleging violations of this Memo will be kept confidential, except as necessary to conduct an appropriate investigation into the alleged violations or when otherwise required by law.

(2) **Writing Reports and Maintaining Records.** A brief written report must be made to the Federal Co-Chair regarding the final resolution of each allegation of hostile or abusive conduct under this Memo.

(a) These reports must identify the individuals implicated, the conduct involved, and the corrective action taken, if any. These records must be sufficient to aid the Federal Co-Chair in determining how to address any future incidents.

(b) If requested by the Federal Co-Chair, written reports also may include a detailed description of the inquiry or investigation, an explanation of any conclusions, the reasoning for any corrective action issued, and/or any documents or other tangible evidence obtained during or created as a result of the inquiry or investigation.

(c) The Federal Co-Chair shall maintain the written reports in a secure location. These written reports are protected by the Privacy Act, and

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will be maintained in accordance with its requirements and exemptions.

(3) **Monitoring the Procedures.** The Federal Co-Chair must ensure that these procedures are properly executed by:

(a) Monitoring inquiries and investigations under this Memo of reported or otherwise discovered hostile or abusive conduct;

(b) Providing guidance concerning the information to be gathered and methods to be used during inquiries and investigations; and

(c) Otherwise assuring that the investigations are swift, thorough, impartial, and appropriate to the allegation.

(4) **Monitoring the Work Environment.** Supervisors/Managers will be responsible for ensuring that their offices are in full compliance with requirements of this Memo. In addition, these officials are responsible for monitoring the work environment following a report alleging a violation of this Memo to ensure that there are no further violations or incidents of retaliation against any individual who has reported harassment or participated in the inquiry or investigation.

6. PROCEDURES UNDER THIS MEMO ARE SEPARATE FROM STATUTORY AND COLLECTIVE BARGAINING CLAIMS.

a. Filing Statutory or Administrative Complaints or Negotiated Grievances. The purpose of this Memo is to stop harassment that has occurred and deter its occurrence in the future. Once management is satisfied that its corrective action has stopped harassment and deterred its recurrence, no further action is necessary. Therefore, corrective action under this Memo does not provide the remedies available in the EEO or other processes, such as compensatory damages. Filing a report under this Memo **does not** satisfy the requirements for filing an EEO complaint, union grievance, or other procedure and obtaining remedies pursuant to them, **nor does it delay the time limits for initiating those procedures.** Thus, an employee who chooses to pursue statutory, administrative, or collective bargaining remedies for unlawful harassment **must** select one of the available forums as follows:

(1) For an EEO complaint pursuant to 29 C.F.R. § 1614 (available for all claims of harassment other than those based on sexual orientation), contact an EEO counselor in the OCR-DOC, at 202-482-0625, 202-482-4993 or 202-482-8121 within 45 calendar days from the most recent incident of alleged harassment (or personnel action if one is involved), as required in 29 C.F.R. § 1614.105(a)(1); or

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(2) For an appeal to the Merit Systems Protection Board pursuant to 5 C.F.R. § 1201.22, file a written appeal with the Board within 30 days of the effective date of an appealable adverse action as defined in 5 C.F.R. § 1201.3, or within 30 days of the date of receipt of the agency's decision, whichever is later.

b. **Reporting Hostile or Abusive Conduct Raised in the Statutory, Administrative, or Collective Bargaining Process.** This Memo is designed to address hostile or abusive conduct before it rises to the level of illegal discrimination for which an employee can exercise the statutory right to file an EEO complaint, grievance, or MSPB appeal. Its purpose is to ensure that management is notified of and has the opportunity to correct any hostile or abusive conduct, and applies whether or not the employee has filed an EEO complaint, union grievance, or MSPB appeal. The Denali Comission's liability for an EEO complaint, grievance, or other action may depend upon whether it was aware of and promptly corrected the hostile or abusive conduct.

(1) If an employee pursues a claim of harassment through the EEO process, an MSPB appeal, or a union grievance, the Denali Commission official who receives notice of such claim shall promptly notify the appropriate responsible management official. The management official must treat the notice as a report under Section 5 of these procedures, unless inconsistent with applicable regulatory or statutory requirements.

(2) The Federal Co-Chair's designee shall provide the record of actions taken under this Memo to the Office handling a parallel statutory or collective bargaining claim.

7. **INFORMATION.** Anyone seeking further information concerning this policy may contact the Federal Co-Chair, the Denali Commission's General Counsel, or OCR-DOC at 202-482-0625.

8. **COORDINATION**
Because of their potentially overlapping roles, the Denali Commission, the DOC Office of the General Counsel, the DOC Office of Civil Rights, and the DOC Office of Inspector General should communicate with each other when they receive an allegation of prohibited harassment.

9. **DISTRIBUTION.** This policy shall be distributed to all employees upon issuance, and annually thereafter. It shall also be distributed to all new employees as part of their orientation during their first week of work.

10. **HARRASSMENT ALLEGATIONS AGAINST THE FEDERAL CO-CHAIR.**
Employees who believe they are subject to harassment by the Federal Co-Chair may either inform the Denali Commission's General Counsel or OCR-DOC at 202-482-0625.

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Human Resources Policies