

 <b>UNIVERSITY OF DENVER</b>	<b>UNIVERSITY OF DENVER POLICY MANUAL DISCRIMINATION AND HARASSMENT</b>	
<p><b><u>Responsible Department:</u></b> Office of Equal Opportunity &amp; Title IX</p> <p><b><u>Recommended By:</u></b> Provost, VC for Student Affairs, VC of Human Resources, and AVC for Equal Opportunity &amp; Title IX</p> <p><b><u>Approved By:</u></b> Chancellor</p>	<p><b><u>Policy Number</u></b> EOIX 3.10.010</p>	<p><b><u>Effective Date</u></b> 08/07/2023</p>

## I. INTRODUCTION

The University is committed to creating and maintaining a community in which people are treated with dignity, decency, and respect. The environment of the University should be characterized by mutual trust, freedom of inquiry and expression, and the absence of intimidation, oppression, and exploitation. People in this community should be able to work and learn in a safe atmosphere. The accomplishment of this goal is essential to the academic mission of the University.

Consistent with this commitment, the University will not tolerate any unlawful discrimination, harassment, or gender-based violence of any kind. When the University becomes aware that a member of the University community may have been subjected to or affected by discrimination, harassment, or gender-based violence, the University will take prompt, appropriate action to enforce this policy. The University’s Office of Equal Opportunity & Title IX (“EOIX”) is responsible for enforcing this policy pursuant to the University’s Comprehensive Discrimination and Harassment Procedures and Title IX Sexual Harassment Procedures, which offer options for informal and formal resolution.

This policy and the Comprehensive Discrimination and Harassment Procedures and Title IX Sexual Harassment Procedures are intended to comply with the prohibitions of all applicable federal, state, and local non-discrimination laws.

## II. POLICY OVERVIEW

### A. Title IX

The University prohibits discrimination on the basis of sex in its educational programs and activities, including sexual misconduct, pay discrimination based on sex, discriminatory pay practices based on sex, and sex discrimination affecting compensation. The University is committed to complying with Title IX of the Education Amendment Act of 1972 and operating the University’s education

programs and activities in a manner consistent with applicable federal law and regulations.

## **B. Equal Opportunity**

The University also provides equal opportunity in employment, educational activities, and other programs to all employees, students, and applicants. The University prohibits discrimination against in any condition of employment or opportunity because of race, color, national origin, ancestry, age, religion, creed, disability, sex, sexual orientation, gender identity, gender expression, marital status, pregnancy, genetic information, military enlistment, or veteran status.

## **C. Pay Transparency**

Employees are not prohibited from discussing their salaries and/or compensation with other employees and non-employees. The University will not discharge, discipline, or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the University, or (c) consistent with the University's legal duty to furnish information. 42 C.F.R. 60-1.35(c).

## **D. Equal Pay Act, Colorado Equal Pay for Equal Work Act, and Pay Equity**

The Equal Pay Act of 1963, as amended, and the Colorado Equal Pay for Equal Work Act prohibit sex discrimination in payment of wages to members of a different sex performing substantially similar work, taking into account the skill, effort, and responsibility of the work.

The University is also committed to the principle of pay equity, and expressly prohibits disparate pay on the basis of an employee's race, color, national origin, ancestry, age (over 40 for employment), religion, creed, disability, sex, sexual orientation, gender identity, gender expression, marital status, pregnancy, genetic information, military enlistment, or veteran status. The University also prohibits pay discrimination based on sex, discriminatory pay practices based on sex, and sex discrimination affecting compensation.

## **E. Application**

This policy applies to students, employees, and third parties and extends to all University activities, both on and off-campus.

For purposes of this policy and the Comprehensive Discrimination and Harassment Procedures and Title IX Sexual Harassment Procedures (collectively, the “Procedures”), Students are defined as any individual registered for or auditing classes at the University; admitted to or enrolled in any University program; or on University premises for any purpose related to the same regardless if the class, program, or other education activity is credit earning or part of a degree or non-degree program (“Students”). An individual is also considered a Student under this definition if they have completed the immediately preceding term and are enrolled for a subsequent term or program; if they are representing the University between terms or programs; or, if they have been previously enrolled, but are on a leave of absence or otherwise have a continuing relationship with the University.

University employees are defined under this policy and the Procedures as all full-time and part-time faculty, University staff, student employees, wage (including temporary employees), professional research staff, and post- doctoral fellows (“Employees”).

Third parties are defined under this policy and the Procedures as consisting of contractors, vendors, visitors, guests, prospective students, applicants for employment, alumni or other third parties (“Third Parties”).

### **III. PROHIBITED CONDUCT UNDER THIS POLICY**

The following conduct, collectively referred to as “Prohibited Conduct,” is prohibited under this policy:

#### **A. Title IX Prohibited Conduct**

Title IX Prohibited Conduct<sup>1</sup> includes the following specifically defined forms of alleged conduct where the conduct occurred in the United States and in the University’s education program or activity. The University’s education program or activity includes the locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the Title IX Prohibited Conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University. The [Title IX Sexual Harassment Procedures](#) apply to reports of Title IX Prohibited Conduct.

Title IX Prohibited Conduct is conduct on the basis of sex that satisfies one or more of the following:

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<sup>1</sup> This term includes what is defined under 34 C.F.R. 106.30(a) as Sexual Harassment.

## **1. Quid Pro Quo Harassment**

*Quid Pro Quo* Harassment is conduct where an Employee of the University conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct.

*Quid Pro Quo* Harassment can occur regardless of whether the condition proposed by the Employee is communicated expressly or impliedly. Examples of *Quid Pro Quo* Harassment include but are not limited to:

- A professor offers a student a higher grade in a class in exchange for having sex with or going on a date with the professor.
- An employee offers a student an employment opportunity in exchange for having sex with or going on a date with the employee.
- A student is offered a research opportunity by an employee in exchange for a sexual relationship.

## **2. Sexual Harassment**

Sexual Harassment is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a University Education Program or Activity. Such conduct includes unwelcome conduct of a sexual nature and may include unwelcome conduct on the basis of sex, sex stereotyping, sexual orientation (or perceived sexual orientation), gender identity (or perceived gender identity), or gender expression (or perceived gender expression).

The term "effectively denies" does not require a Complainant to be entirely physically excluded from educational opportunities and may be established when the conduct so undermines and detracts from the individual's educational experience.

## **3. Sexual Assault**

Sexual Assault is defined as any sexual act directed against another person, without the Consent of that other person, including instances where the other person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity. Sexual Assault can occur between individuals of the same or different sexes and/or genders. Sexual Assault includes the following:

### **a. Rape**

Rape means (1) penetration, no matter how slight, of the vagina or anus of another person with any body part or object, without Consent; or (2) oral penetration by a sex organ of another person without Consent.

**b. Sodomy**

Sodomy means (1) oral or anal sexual intercourse with another person, (2) without the Consent of that person, including instances where that person is unable to give Consent because of their age or because of their temporary or permanent mental or physical incapacity.

**c. Sexual Assault with an Object**

Sexual Assault with an Object is (1) the use of an object or instrument to penetrate, (2) however slightly, (3) the genital or anal opening of the body of another person, (4) without the Consent of that person, including instances where that person is unable to give Consent because of their age or because of their temporary or permanent mental or physical incapacity.

**d. Fondling**

Fondling is (1) the touching of the private body part of another person (buttocks, genitals, breasts) (2) for the purpose of sexual gratification, (3) without the Consent of that person, including instances where that person is unable to give Consent because of their age or because of their temporary or permanent mental or physical incapacity.

**e. Incest**

Incest is (1) nonforcible sexual intercourse (2) between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**f. Statutory Rape**

Statutory Rape is (1) nonforcible sexual intercourse (2) with a person who is under the statutory age of consent.

**g. Consent**

For all forms of Sexual Assault set forth above under this policy, Consent is defined as (1) mutually understandable, clear, knowing and voluntary affirmative permission (2) given through clear words or actions (3) regarding the willingness to engage in and the conditions for sexual activity.

Consent cannot be obtained by:

- i. Incapacitation which means that a person is impaired to such a level that they lack the ability to make informed, rational judgments about whether or not to engage in sexual activity.

- a. A person who is incapacitated is unable, temporarily or permanently, to give Consent because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that the sexual activity is taking place.
  - b. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.
  - c. Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.
  - d. A person may also lack capacity because of their age.
- ii. Force, which means, physical violence involving a person exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, strangling, and brandishing or using any weapon.
  - iii. Threats, which are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.
  - iv. Coercion, which is the use of an unreasonable amount of pressure to induce participation in sexual activity. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular form of sexual contact or sexual intercourse, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.
  - v. Abuse of Power, which occurs when an individual in a position of authority, whether that authority is real or perceived, induces another individual to engage in activity that would otherwise be nonconsensual based on the need for a specific performance or duty (e.g., grading, performance evaluation).

#### **4. Dating Violence**

Dating Violence<sup>2</sup> is an act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the other individual and where the existence of such a relationship is determined based on consideration of the (1) length of the relationship, (2) type of relationship,

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<sup>2</sup> The Title IX regulation at 34 C.F.R. § 106.30(a) defines Dating and Domestic Violence as defined in 34 U.S.C. 12291(a)(8) and 34 U.S.C. 12291(a)(10).

and (3) frequency of interaction between the persons involved in the relationship.

## **5. Domestic Violence**

Domestic Violence is a felony or misdemeanor crime of violence by a current or former spouse or intimate partner of the victim, by a person with whom the individual shares a child in common, by a person who is cohabitating with or has cohabitated with the individual as a spouse or intimate partner, by a person similarly situated to a spouse of the individual under the domestic or family violence laws of the State of Colorado, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Colorado.

## **6. Stalking**

Stalking<sup>3</sup> is engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for their safety or the safety of others; or (2) suffer substantial emotional distress.

- a. Course of conduct means two or more acts, including, but not limited to, acts in which a person directly, indirectly, or through third parties, by any actions, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.
- b. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- c. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## **B. Discrimination/Harassment Prohibited Conduct**

Discrimination/Harassment Prohibited Conduct includes the following specifically defined forms of alleged conduct when such conduct does not meet the definition of Title IX Prohibited Conduct and when the conduct (a) occurred on University Premises; (b) occurred in the context of employment or an education program or activity of the University; (c) had (or could reasonably be expected to have) continuing adverse effects on University premises, including posing a reasonable risk of harm to the community; or (d) had (or could reasonably be expected to have) continuing adverse effects in employment or an education program or activity off University premises.

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<sup>3</sup> The Title IX regulation at 34 C.F.R. § 106.30(a) defines Stalking as defined in 34 U.S.C. 12291(a)(30).

The [Comprehensive Discrimination and Harassment Procedures](#) apply to reports of Discrimination/Harassment Prohibited Conduct. Discrimination/Harassment Prohibited Conduct is conduct that satisfies one or more of the following:

### **1. Discrimination**

Discrimination on the basis of a protected status is an adverse action with respect to an individual's employment or participation in an education program or activity based, in whole or in part, upon the person's race, color, national origin, ancestry, age, religion, creed, disability, sex, sexual orientation, gender identity, gender expression, marital status, pregnancy, genetic information, military enlistment, or veteran status.

Discrimination also includes an allegation of a failure to provide reasonable accommodations as required by law, such as for disability, religion, or creed.

### **2. Discrimination under the Equal Pay Act and/or Colorado Equal Pay for Equal Work Act**

Discrimination under the Equal Pay Act and/or Colorado Equal Pay for Equal Work Act occurs when employees of one sex are paid wages at a rate less than the rate at which employees of a different sex are paid for substantially similar work (considering skill, effort including consideration of shift work, and responsibility), except where such payment of wages is made pursuant to: (i) a seniority system, (ii) a merit system, (iii) a system which measures earnings by quantity or quality of production, (iv) the geographic location where the work is performed; (v) relevant education, training or experience; or (iv) travel, if the travel is a regular and necessary condition of the work performed. For purposes of this provision wage means all forms of payment made to or on behalf of employees as remuneration for employment.

### **3. Harassment**

Harassment on the basis of a protected status is a form of discrimination based, in whole or in part, upon the person's race, color, national origin, ancestry, age, religion, creed, disability, sex, sexual orientation, gender identity, gender expression, marital status, pregnancy, genetic information, military enlistment, or veteran status, and includes the following:

- a. Quid Pro Quo Harassment – Unwelcome, unwanted conduct when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in a University program or activity; or
- b. Hostile Environment Harassment – Unwelcome, unwanted conduct that is sufficiently severe or pervasive to interfere with a person's work, academic performance, or participation in a University education program or activity,



such that a reasonable person (as defined above) would consider the environment intimidating, hostile, or abusive.

#### **4. Harassment under the POWR Act**

- a.** For purposes of the University's compliance with the Colorado Protecting Opportunities and Workers' Rights ("POWR") Act, for an allegation by a University employee of harassment, the University defines harassment under the POWR Act as any unwelcome physical or verbal conduct or any written, pictorial, or visual communication directed at an individual or group of individuals because of that individual's or group's membership in, or perceived membership in, a protected class listed in the POWR Act (disability, race, creed, color, sex, sexual orientation, gender identity, gender expression, marital status, religion, age, national origin, or ancestry), which conduct or communication is:
  - i.** Subjectively offensive to the individual alleging harassment; and
  - ii.** Is objectively offensive to a reasonable individual who is a member of the same protected class.
  
- b.** The conduct or communication need not be severe or pervasive to constitute a discriminatory act or unfair employment practice under the POWR Act if:
  - i.** Submission to the conduct or communication is explicitly or implicitly made a term or condition of the individual's employment;
  - ii.** Submission to, or objection to, or rejection of the conduct or communication is used as a basis for employment decisions affecting the individual; or
  - iii.** The conduct or communication has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.
  
- c.** The nature of the work or the frequency with which harassment in the workplace occurred in the past is not relevant to whether the conduct or communication is a discriminatory or an unfair employment practice under the POWR Act.
- d.** Petty slights, minor annoyances, and lack of good manners do not constitute harassment unless the slights, annoyances, or lack of manners, when taken individually or in combination and under the totality of the circumstances, meet the standards set forth in Section 4.a above.
- e.** Because the scope of the POWR Act is limited to allegations by a University employee of harassment, the standard set forth above does not apply to allegations by a student of harassment outside of the context of their employment by the University.

## **5. Non-Consensual Sexual Contact**

Non-Consensual Sexual Contact is (1) any intentional (not incidental or accidental), (2) sexual, touching, (3) however slight, (4) with any object or body part (as described below), (5) performed by a person upon another such person, without Consent.

Examples of Non-Consensual Sexual Contact include (a) intentional touching of the breasts, buttocks, or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts; and (b) making another person touch you or themselves with or on any of these body parts.

Nonconsensual Sexual Contact includes Sexual Assault that does not occur in the University's Education Program or Activity.

## **6. Non-Consensual Sexual Intercourse**

Non-Consensual Sexual Intercourse is (1) any penetration, (2) however, slight (3) with any object or body part (as described below) (4) performed by a person upon another person, (5) without Consent.

Examples of Non-Consensual Sexual Intercourse include (a) vaginal penetration by a penis, object, tongue, or finger; (b) anal penetration by a penis, object, tongue, or finger; and (c) any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

Non-Consensual Sexual Intercourse includes Sexual Assault that does not occur in the University's Education Program or Activity.

## **7. Sexual Exploitation**

Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit or to benefit or advantage anyone other than the individual being exploited, when that conduct does not otherwise constitute Prohibited Conduct under this policy. Examples of Sexual Exploitation include, but are not limited to:

- a. Prostituting another person;
- b. Recording or photographing private sexual activity and/or a person's private parts (genitalia, breasts, or buttocks) without knowledge and agreement of the other party;
- c. Disseminating or posting images of private sexual activity and/or a person's private parts (genitalia, breasts, or buttocks) without knowledge and agreement of the other party

- d. Allowing third parties to observe private sexual activity, such as from a hidden location (e.g., closet) or through electronic means (e.g., Skype, FaceTime, livestreaming images);
- e. Engaging in voyeurism (e.g., watching privacy sexual activity without the consent of the participants or viewing another person's private parts (including genitalia, breasts, or buttocks) in a place where that person who have a reasonable expectation of privacy);
- f. Endangering the health and safety of another without the knowledge and agreement of the other party (such as knowingly exposing another individual to a sexually-transmitted infection);
- g. Exposing one's private parts (including breasts, buttocks, or genitals) in a non-consensual circumstance or inducing another to expose such private parts;
- h. Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give Consent to sexual activity; or
- i. Using a fake or stolen identity for an online persona to deceive or manipulate another person into a romantic or sexual relationship, also known as catfishing.

## **8. Intimate Partner Violence**

Intimate Partner Violence includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. Intimate Partner Violence includes Dating Violence and Domestic Violence that does not occur in the University's Education Program or Activity. The existence of such a relationship is determined based on consideration of the (1) length of the relationship, (2) type of relationship, and (3) frequency of interaction between the persons involved in the relationship.

Physical violence means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, strangling, and brandishing or using any weapon.

## **9. Stalking**

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for their safety or the safety of others or (2) suffer substantial emotional distress.

- a. Course of conduct means two or more acts, including, but not limited to, acts in which a person directly, indirectly, or through third parties, by any actions, method, device, or means, follows, monitors, observes, surveils,

threatens, or communicates to or about another person, or interferes with another person's property.

- b. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- c. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Stalking includes Stalking that does not occur in the University's Education Program or Activity.

## **10. Physical Misconduct Based on a Protected Status**

Physical Misconduct Based on a Protected Status means any intentional (not incidental or accidental) act causing or likely to cause bodily harm to any person when there is reasonable cause to believe the act was motivated, in whole or in part, by the protected status of another person. Protected status includes race, color, national origin, ancestry, age), religion, creed, disability, sex, sexual orientation, gender identity, gender expression, marital status, pregnancy, genetic information, military enlistment, or veteran status.

## **11. Failure to Inform Supervisor of a Consensual Sexual Relationship with a Student or a Supervisee**

The University strongly discourages romantic or sexual relationships between a teacher and student or between a supervisor and supervisee. In the event of such a relationship between a teacher and student or between a supervisor and supervisee, the person in a position of authority must notify their own supervisor of the relationship so that the supervisor can address any issues raised by the relationship through this policy. Failure to provide such notice is a violation of this policy.

- a. For purposes of this policy, teacher includes a faculty member, teaching assistant, graduate student, administrator, coach, advisor, counselor, professional housing staff, program director or other University employee having supervisory, teaching, mentoring, or other evaluative responsibilities for students.
- b. Where a Complainant who in a subordinate position alleges Sexual Harassment or Harassment on the Basis of a Protected Status pursuant to this policy, and the Respondent has not disclosed the relationship as provided herein, the Respondent's assertion that the Complainant consented to the relationship shall not be a sufficient defense for Prohibited Conduct.

## **12. Retaliation**

Retaliation means an adverse action or other form of negative treatment, including but not limited to intimidation, threats, coercion, discrimination, or harassment, carried out in response to a good faith reporting of or opposition to Prohibited Conduct; an individual's or group's participation, including serving as a witness, administering, or assisting in an investigation and/or resolution of a report under this policy, or otherwise exercising authority under this policy; or other form of good faith opposition to what an individual reasonably believes to be Prohibited Conduct under this policy.

- a. Individuals are also protected from Retaliation for making good faith requests for accommodations on the basis of religion or disability.
- b. To be a violation of this policy, the challenged actions or treatment must be sufficient to discourage a reasonable person from further reporting, participation, or opposition.
- c. Charging an individual with a violation of this policy for making a materially false statement in bad faith in the course of any process under this policy does not constitute Retaliation prohibited under this policy. The exercise of rights protected under the First Amendment also does not constitute Retaliation under this policy.
- d. The University will treat Retaliation of a separate incident of Prohibited Conduct under this policy.

## **13. Obstruction**

Obstruction means when any person, on their own behalf or on behalf of another person, intentionally deters, interferes, or hinders:

- a. The University's ability to conduct an investigation (e.g., the destruction or request to destroy relevant evidence after notice of the University's investigation);
- b. Another person from reporting allegations of Prohibited Conduct; or
- c. Another person from participating in any process under this policy.

## **IV. RECORDS**

The University will not store records related to the investigation of any allegations of discrimination, harassment, and/or gender-based violence in personnel files of employees reporting alleged discrimination, harassment, and/or gender-based violence, and instead the University will retain such records in a separate secure location.

**V. PROCESS OVERVIEW**

The Associate Vice Chancellor for Equal Opportunity and Title IX shall develop and publish procedures that describe the rights and obligations under the policy as well as clarify definitions and scope within this policy. The Associate Vice Chancellor for Equal Opportunity and Title IX submits recommendations for substantive changes to the Senior Vice Chancellor for Operations and Strategy Implementation and to the Provost and Executive Vice Chancellor for their review and approval.

**VI. DEFINITIONS**

**“Complainant”** means an individual who is alleged to have experienced Prohibited Conduct as defined in this policy.

**“Education Program or Activity”** is the locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the Title IX Prohibited Conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

**“Respondent”** means an individual who is alleged to have engaged in Prohibited Conduct as defined in this policy.

**“United States”** means the physical geography of the United States of America and its territories.

<b>Revision Effective Date</b>	<b>Purpose</b>
8/7/23	Clerical changes and edits to conform to changes in applicable law.