



FISCAL YEAR 2020

No FEAR Act

ANNUAL REPORT TO CONGRESS
Federal Deposit Insurance Corporation

FDIC

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INTRODUCTION

The Federal Deposit Insurance Corporation (FDIC) is pleased to present its *Annual Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) Report to Congress*, in accordance with Title II, Section 203 of the No FEAR Act, Public Law 107-174. This No FEAR Act annual report summarizes the FDIC's activities throughout fiscal year 2020 to ensure the agency's accountability for anti-discrimination and whistleblower laws related to employment.

The FDIC has longstanding, formal equal employment opportunity (EEO) standards in place, which demonstrate the agency's commitment to the principles of EEO and to promoting diversity, equity, and inclusion (DEI) within the agency's workforce and senior leadership.

The FDIC's Office of Minority and Women Inclusion (OMWI) is delegated overall responsibility for DEI, civil rights, and minority and women outreach programs. In addition to OMWI, the FDIC's Office of Inspector General (OIG), the Division of Administration (DOA), and the Legal Division all play a role in implementing the No FEAR Act at the FDIC.

OMWI continually works to ensure that the U.S. Equal Employment Opportunity Commission's (EEOC's) "six essential elements of a model EEO program" are incorporated throughout the FDIC's operational areas. Notably, in 2020, OMWI worked with senior leadership to establish DEI performance criteria that evaluates managers and supervisors on their commitment to EEO policies and principles and their participation in the EEO program. As a result, the FDIC has met the EEOC's requirement that agencies "review, evaluate, and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity." (29 CFR § 1614.102(a)(5)).

The FDIC continues to assess our policies and processes for recruitment, development, training, and retention to ensure that we are building a skilled, multi-generational, and diverse workforce. For example, in 2020, the FDIC continued an ongoing barrier analysis to determine if any disparities in equal employment opportunities exist within the agency. This type of analysis helps us keep a finger on the pulse of our organization and supports our efforts to create, maintain, and improve policies and processes that benefit our current workforce. We intend to develop an action plan to address any noted triggers or disparities once the barrier analysis is completed.

More details about our specific efforts in 2020 are provided throughout this report.

PURPOSE OF REPORT AND BACKGROUND

The No FEAR Act was signed into law in order to reduce workplace discrimination across the federal government by holding federal agencies accountable for violations of anti-discrimination and whistleblower protection laws. Section 203 of the No FEAR Act requires that, no later than 180 days after the end of each fiscal year, the FDIC submit an annual report to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the EEOC, and the Attorney General of the United States. Regulations from the Office of Personnel Management (OPM) implementing the No FEAR Act, 5 CFR, Part 724, Subpart C, also require the submission of this annual report to the Director of OPM.

The Annual No FEAR Act Report must provide the following information:

- The number, status, and disposition of federal court cases, pending or resolved, arising under the laws covered by the No FEAR Act;
- Judgment Fund reimbursements and adjustments to the FDIC budget to meet reimbursement requirements;
- The number and type of disciplinary actions related to discrimination, retaliation, or harassment and the FDIC's policy relating to appropriate disciplinary action;
- Final year-end summary data related to the FDIC's EEO complaint activity for the fiscal year;
- An analysis of trends, causation, and practical knowledge gained through experience;
- Actions planned or taken to improve the FDIC's discrimination complaint program; and
- The agency's No FEAR Act training plan.

The laws covered in the No FEAR Act include:

- Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e-16 (race, color, religion, sex, national origin, and reprisal)
- The Age Discrimination in Employment Act of 1967, *as amended*, 29 U.S.C. § 633a (age (40 and over) and reprisal)

- The Equal Pay Act of 1963, *as amended*, 29 U.S.C. § 206(d) (sex-based wage differentials and reprisal)
- Section 501 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 791 (physical and mental disabilities and reprisal)
- The Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff, *et seq.* (genetic information about an individual or individual’s family members and reprisal)
- The Civil Service Reform Act of 1978, 5 U.S.C. § 2302(b) and (d) (prohibited personnel practices, and race, color, religion, sex, national origin, age, disability, marital status, political affiliation, and whistleblowing)

NO FEAR ACT DATA ANALYSIS

Complaint Activity in Federal Court and Disposition

In fiscal year 2020, five new cases were filed against the FDIC in various federal District Courts. This represents an increase from FY 2019 when two new cases were filed and FY 2018 when no new cases were filed. Notably, four of the five new cases in 2020 were filed outside the headquarters area (three in Dallas and one in Kansas City), and only one of the new cases was brought by a current FDIC employee (with the remaining cases being filed by former employees). Despite the recent increase in new cases, the total number of pending cases is about only half of what it was in the peak year of 2016.

EEO Cases Filed Against the FDIC, by status					
	Fiscal Year				
	2016	2017	2018	2019	2020
New Cases Filed in District Court	7	2	0	2	5
Pending District Court Cases	13	9	3	3	7
Pending Appellate Court Cases	2	4	2	1	0
Settlements	1	1	1	1	0
Withdrawals	1	1	0	0	0
Final Judgment for Complainant	0	0	0	0	0
Final Judgment for Agency	5	4	2	1	1

Judgment Fund Reimbursements and Budget Adjustment

The FDIC is an independent agency, and with the exception of the FDIC's OIG, is not appropriated by Congress. There were no judgments against the FDIC, including the OIG, from cases pending or resolved in federal district court in FY 2020. Therefore, no budget adjustments were necessary.

Number of Employees Disciplined

Pursuant to 5 C.F.R. 724.102, discipline is defined to include any one, or a combination, of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal. The regulation also provides that, irrespective of discrimination cases in federal court, federal agencies are to report the total number of employees disciplined and the specific nature of the disciplinary action taken in accordance with agency policy that prescribes disciplinary action for discrimination, retaliation, or harassment conduct, and whistleblower protection law violations.

During FY 2020, there were no findings of discrimination issued by the Merit Systems Protection Board, the Office of Special Counsel, or federal courts; however, there was one finding of discrimination issued by the EEOC. FDIC management reviewed the EEOC's decision and determined that no disciplinary action was warranted for the actions which resulted in the finding of discrimination.

The FDIC's Anti-Harassment Program offers employees a venue to raise harassment claims. Harassment claims submitted through this process are reviewed and resolved in an accelerated process by OMWI, the Labor and Employee Relations (LERS) section of the FDIC's Division of Administration, and the Legal Division. During FY 2020, six inquiries involving allegations of harassment were reported through the FDIC's Anti-Harassment Program. Three inquiries were found to be unsubstantiated; two inquiries resulted in oral counseling; and one inquiry resulted in the issuance of a Letter of Reprimand.

Discipline Policy

To help prevent discrimination in our workforce and to inform managers, supervisors, and employees of the consequences for committing acts of discrimination, the FDIC has promulgated and enforces EEO and anti-discrimination and whistleblower policies and procedures that are applicable to all employees, and applicants for employment. These policies outline employee rights and responsibilities and are posted on the FDIC's internal and external websites. Managers and supervisors share the responsibility for successfully implementing these policies. The OMWI Director, in coordination with LERS and the Legal Division, regularly reviews these policies and procedures to ensure that they are up-to-date, legally sufficient, well communicated, applied consistently, and implemented fairly.

The FDIC has in place an Equal Opportunity Policy (Circular 2710.2), which explains the EEO process, including pertinent regulatory timeframes and the roles and responsibilities of various offices. This policy makes clear that discrimination, harassment, and retaliation will not be tolerated at the FDIC. As required by the EEOC, the FDIC's EEO poster contains information about the EEO complaint process and contact information for the FDIC's EEO counselors. This information is posted on OMWI's internal website, as well as throughout the agency's headquarters, regional, and field offices.

The FDIC also has an Anti-Harassment Program (Circular 2710.3) in place that defines harassment and inappropriate conduct and, just like the Equal Opportunity Policy, makes clear that all forms of harassment or inappropriate conduct and retaliation will not be tolerated at the FDIC. To ensure an inclusive workplace, this program is purposefully broad. It identifies multiple avenues of redress for claims of harassment, and does not limit employees to the EEO process.

A copy of the FDIC's policies related to Equal Opportunity, the Anti-Harassment Program, Disciplinary and Adverse Actions, and Whistleblower Protection Rights are included in Appendix C of this report.

Trends and Causal Analysis of Administrative EEO Complaint Activity

OMWI's Equal Opportunity Compliance and Training Branch (EOCTB) is responsible for ensuring that the FDIC complies with all federal EEO laws and related civil rights protections. Additionally, the EOCTB provides a neutral forum for the discussion, investigation, and resolution of EEO matters; provides agency guidance and standards for establishing and maintaining effective equal opportunity programs; provides policy and technical assistance on EEO and civil rights to FDIC senior leadership and supervisors; and manages the FDIC's EEO complaint process pursuant to 29 C.F.R. Part 1614.

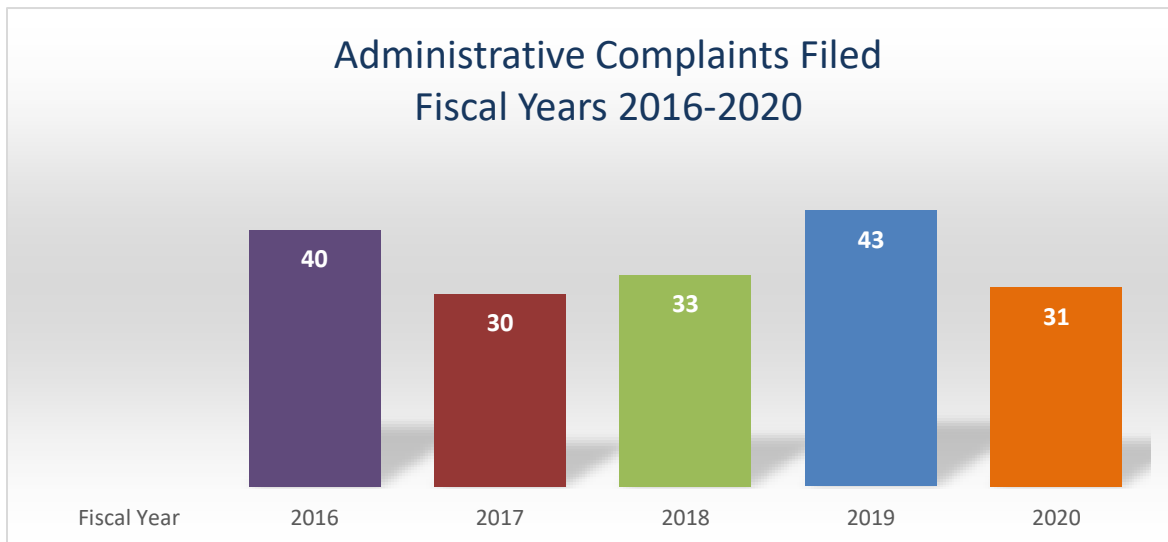
Complaint Activity

Historically, the FDIC has not experienced a large number of complaints. This report primarily focuses on FY 2020, but also includes the five-year reporting period between FY 2016 and FY 2020.

There were 31 formal EEO complaints filed at the FDIC in FY 2020. This represents a 28 percent decline in complaint activity compared to the 43 EEO complaints filed in FY 2019. We believe that this decline is the result of the success of our EEO training and education efforts, as well as the shift to mandatory telework in response to the COVID-19 pandemic.

Complaint activity has fluctuated throughout the past five fiscal years, ranging from 40 in 2016 to 31 in 2020. In FY 2020, of the 31 complaints filed, reprisal (17), race (15), sex (12), and age (12) were the most frequently filed bases of discrimination. The most frequently raised issues were promotion/non-selection (nine), terms and conditions of employment (eight), non-sexual harassment (six), and performance/appraisal (six). Detailed

administrative EEO complaint data for all of the EEO bases and issues can be found in Appendix B2.



Complaints by Basis

As stated above, for FY 2020, reprisal, race, sex, and age were the most frequently filed bases. In FY 2020, there were 17 complaints filed on the basis of reprisal, in comparison to 22 complaints filed in FY 2019, representing a 23 percent decline. For the basis of race, there were 15 complaints filed in FY 2020, in comparison to 23 filed in FY 2019, representing a 34 percent decline. For the basis of age, there were 12 complaints filed in FY 2020, in comparison to 18 complaints filed in FY 2019, representing a 33 percent decline. Of these most frequently filed bases, the most significant decrease this reporting period were complaints related to sex discrimination. In FY 2020, there were 12 complaints filed on the basis of sex, in comparison to 21 filed in FY 2019, representing a 43 percent decline.

Complaints by Issue

For FY 2020, denial of promotion/non-selection, terms and conditions of employment, non-sexual harassment, and evaluation/performance appraisal were the most frequently filed issues. In FY 2020, there were nine claims of denial of promotion/non-selection, in comparison to 12 claims in FY 2019, representing a 25 percent decline. For claims alleging terms and conditions of employment, there were eight claims filed in FY 2020, in comparison to 14 claims filed in FY 2019, representing a 43 percent decline. In FY 2020, there were six claims of non-sexual harassment, in comparison to 14 in FY 2019, representing a 57 percent decline. For claims alleging evaluation/performance appraisal, there were six claims filed in FY 2020, in comparison to 10 in FY 2019, representing a 40 percent decline.

Top Three Bases for Complaints Filed		
	% total complaints filed	
	FY 2020	FY 2019
Reprisal	54.8%	53.4%
Race	48.3%	51.1%
Sex	38.7%	48.8%

Top Three Issues for Complaints Filed		
	% total complaints filed	
	FY 2020	FY 2019
Promotion	29.0%	32.5%
Terms and Conditions	25.8%	32.5%
Harassment (non-sexual)	19.3%	27.9%

Timeliness of Complaint Completions

During FY 2020, the FDIC completed 96.7 percent of all investigations of EEO complaints in a timely manner (100 percent of all non-conflict complaints), a slight decrease from the timely completion rate of 97.6 percent (100 percent of all non-conflict complaints) in FY 2019. OMWI continued to use a contracting firm to provide EEO investigative services and added secondary memorandums of understanding with two other governmental agencies to supplement investigative services on an as-needed basis for conflict complaints. OMWI is working with a Conflict Complaints Manager to address any program deficiencies that are affecting the timely processing of conflict complaints. This should result in OMWI resolving noted program deficiencies in the agency's FY 2019 MD-715 report to the EEOC.

Timeliness of EEO Complaint Completions, FYs 2016–20			
Fiscal Year	Complaints Filed	Length of Investigations (Average Days)	Percent Completed Timely
2020	31	200	96.7%
2019	43	201	97.6%
2018	33	187	96.9%
2017	30	197	100%
2016	40	179	100%

Dispute Resolution Training Efforts

The FDIC provides information to managers and supervisors regarding Alternative Dispute Resolution (ADR) techniques and encourages employees to consider mediation when a complaint has been filed. Management is required to participate in mediation if the complainant elects mediation and the FDIC determines the matter is suitable for mediation.

The ADR resources include:

- EEO and Diversity Workshop for Supervisors
- No FEAR Act Training
- Negotiation Skills
- Resolving Conflict on Your Team: A Course for Non-Supervisory Team Leaders

Participation in Resolution Training, FY 2020	
No FEAR Act Training Only	Number of Participants
Supervisors	15
Employees	619
Total No FEAR Act Training	634
Other ADR Training	
Supervisors	165
Employees	32
Total ADR Training	197

The decline in the number of formal complaints filed in 2020 is a positive trend, and maybe the result of the FDIC's shift to mandatory telework in response to the COVID-19 pandemic. The FDIC will continue to monitor patterns and trends in discrimination complaint filings, and explore new and effective ways to mutually resolve complaints. Additionally, OMWI will monitor the agency's complaint activity compared to government-wide activity and the activity at agencies most similar to the FDIC to ensure a continuous decline in EEO complaint activity.

Practical Knowledge Gained through Experience

Beyond the steps outlined in the No FEAR Act, the FDIC has taken, and continues to identify, measures to maximize the effectiveness of our EEO and Anti-Discrimination Programs.

At the highest level, FDIC Chairman McWilliams has repeatedly voiced her commitment to building a diverse and inclusive FDIC workforce that makes all employees feel included and welcomed and that values and respects individuals' differences. To support agency-wide

initiatives and policies, the FDIC's OMWI Director regularly advises the Chairman and other senior leadership on EEO, civil rights, and diversity issues.

OMWI also briefs Division and Office managers and Employee Resource Groups (ERGs) on EEO matters, monitors reasonable accommodation requests, and generates reports to internal and external customers and stakeholders.

The FDIC has established Chairman's Diversity Advisory Councils (CDACs) at headquarters and in each of the agency's six regions to provide advice to the Chairman, through the OMWI Director and the Diversity and Inclusion Executive Advisory Council (D&I EAC), on diversity and inclusion issues and concerns. The CDACs identify and adopt best practices to promote a diverse and inclusive workforce and to identify and remove barriers to equal employment opportunities.

The FDIC's ERGs are another channel for generating ideas to build a more inclusive and supportive work environment. The FDIC currently recognizes nine ERGs; these groups encourage networking and collaboration and provide employees with career management and personal development resources.

In FY 2020, the CDACs, in conjunction with the ERGs, hosted 12 diversity and inclusion events at headquarters and regional, area, and field office locations that addressed diversity and inclusion topics, including proper etiquette when interacting with deaf employees, breaking the concrete ceiling, and minority women in the workplace.

In FY 2020, the FDIC saw an increase in the number of individuals with disabilities and targeted disabilities in its workforce. The percentage of persons with disabilities in the FDIC workforce increased from 11.95 percent in FY 2019 to 12.31 percent in FY 2020 (representing a 3.01 percent increase), higher than the 12 percent federal goal. The percentage of persons with targeted disabilities in the FDIC workforce also grew: from 2.35 percent in FY 2019 to 2.39 percent in FY 2020, higher than the 2 percent goal among federal agencies.

In FY 2020, OMWI offered training and other resources to support the agency's employees with disabilities. For example, in May 2020, OMWI, in collaboration with the agency's Corporate University (CU), launched online Reasonable Accommodation training, which had been updated to reflect the policy revisions approved by the EEOC.

Actions Taken/Planned to Improve Complaint and Civil Rights Programs

The FDIC is committed to providing all employees with a work environment that embodies excellence and acknowledges and respects the diversity of its employees. Providing an environment free of discrimination and harassment remains a high priority for the FDIC.

Actions Taken

Pursuant to the requirements of EEOC Management Directive 715 (MD-715), the FDIC evaluates its EEO program on an annual basis. These self-evaluations have highlighted areas that need more attention, and we have begun to address these areas by developing actions plans for improving our EEO program.

In 2020, the FDIC Chairman issued new initiatives to improve DEI within the agency's workforce. The initiatives included creating a culture of excellence that supports and sustains high performance, educates all employees on the importance of DEI, and identifies and eliminates barriers.

OMWI collaborated with the Legal Division to develop an Internal Conflict Complaint Process policy to ensure adherence with regulatory time requirements in accordance with EEOC Regulation 29 CFR 1614, and EEOC Management Directives 110 and 715. OMWI also worked with the Legal Division to review their internal standard operating procedures for processing conflict complaints in an effort to improve timeliness.

On June 24, 2020, the FDIC participated in the "Joint Agency Conversation about Diversity, Inclusion, and Unconscious Bias." The webinar was co-sponsored with the Consumer Financial Protection Bureau, the Federal Housing Finance Agency, the Federal Reserve Board, the National Credit Union Association, the Office of the Comptroller of the Currency, the Securities and Exchange Commission, and the Department of the Treasury. The purpose of the webinar was to engage in a critical conversation about the effects of racism – systemic, overt, or implicit – on people of color, especially in the workplace environment; the practice of allyship (i.e., using privilege and power to achieve equity and inclusion); and practical steps and tools to address the all-important question: "What can we do?"

The FDIC also established a Minority Recruitment Task Force (MRTF) to assist in building a diverse and inclusive corporate talent pipeline that is reflective of the nation's relevant civilian labor force and has the skills to meet evolving industry demands. The MRTF engaged in targeted outreach to colleges and universities, affinity groups, and professional organizations to elicit interest in and applications for FDIC entry-level career opportunities and internships among diverse and inclusive groups.

The EOCTB held weekly meetings with staff to identify and address organizational and programmatic issues or concerns that may create problems in the processing of EEO complaints. The EOCTB reviewed data contained in monthly management reports and quarterly and annual No FEAR Act reports to identify areas or subjects where the EOCTB needed to provide additional training to FDIC employees. This analysis resulted in OMWI conducting additional training on the topics of retaliation and reasonable accommodation.

Statements and Policies

Throughout 2020, the FDIC Chairman and other senior leaders issued three separate statements to employees reiterating the agency's commitment to anti-discrimination and anti-harassment. In addition, the FDIC Chairman has repeatedly expressed her full support for the FDIC's EEO Standards, her commitment to the principles of EEO, and her support for expanding DEI in the agency's workforce and senior management.

Employee feedback and perspectives on DEI inform our strategies and initiatives to promote a more inclusive workplace and improve employee engagement and retention. During the summer and fall of 2020, we offered our employees the opportunity to participate in facilitated listening sessions, both FDIC-wide and at the division and office level. These sessions provided employees with a forum to discuss current events and workplace DEI issues and understand differences. The FDIC's Diversity and Inclusion Executive Advisory Council reviewed the themes that emerged from the sessions and developed DEI initiatives that were incorporated into our *Strategic Plan* and corporate goals.

OMWI continued to review, update and implement changes to various diversity, EEO, and civil rights-related policies and procedures. As a result of the review, OMWI revised the agency's Anti-Harassment Program policy (Circular 2710.5) in 2020. OMWI is also working to revise Circular 2710.12, Non-Discrimination in FDIC Conducted Education and Training Programs and Outreach Activities, and Circular 2710.15, Accessibility to FDIC Programs and Activities.

In addition, the EOCTB revised its standard operating procedures in accordance with the EEOC Memorandums issued during the coronavirus pandemic.

Training

In FY 2020, OMWI launched a reboot of its Forum Webinar Series. The following webinars were hosted in 2020:

- "EEO Discrimination Processes Refresher." This webinar provided an overview of discrimination complaint processes, explained what to do if an employee believes they have been subject to discrimination, discussed the laws and regulations that prohibit discrimination in the employment process, and discussed the FDIC's discrimination complaint processing policies and procedures, including the handling of personally identifiable information and sensitive information (PII/SI) during the complaint process.
- "An Introduction to the Reasonable Accommodation Process." This webinar discussed how reasonable accommodations help build and maintain an inclusive work environment, and provided an overview of the tools and resources available to

FDIC supervisors to effectively respond to reasonable accommodation requests from employees.

- “Unconscious Bias.” This webinar provided insight and opportunities to discuss and explore unconscious bias; explained how to identify the ways unconscious bias manifests itself in the workplace; discussed the business impact of possible unconscious filters, preferences, and patterns on how individuals view and assess others; and explained how to recognize and combat unconscious bias that impacts interactions and decision-making.
- “Micro Triggers – Little Things, Big Impact.” This webinar explored the impact of Micro Triggers on individuals, team dynamics, and productivity; identified the skills to help minimize the impact of micro-inequities in the workplace; and provided an opportunity for participants to share, via chat, some of their personal experiences.

In collaboration with Corporate University, OMWI continued to revise the EEO training for managers and supervisors. The training provides participants information regarding EEO policies and procedures, their role and responsibilities in the EEO process, and what constitutes sexual harassment.

OMWI continued to participate in the FDIC’s new employee orientation to ensure all employees are aware of their EEO rights and responsibilities, are familiar with the OMWI staff, and are knowledgeable about the agency’s resources for Equal Opportunity.

In addition, OMWI personnel responsible for administering the EEO complaint process received EEOC mandatory training (EEO Counseling and Investigations), and relevant legal updates and guidance.

Actions Planned

All of the actions described above have enhanced the FDIC’s ability to create a more inclusive environment and promote a workplace that is free of discrimination. We will continue to invest in these initiatives in 2021. In addition, the FDIC plans to also focus on the following in 2021:

EEO Program

OMWI will collaborate with the Legal Division to finalize OMWI’s Internal Conflict Complaint Process policy. We will revise and implement the Legal Division’s internal standard operating procedures for processing conflict complaints, and we will update the procedures and contract requirements to improve the timeliness of investigations performed by outside contractors and other governmental agencies.

OMWI will enhance the accuracy and efficiency of EEO complaint data monitoring, tracking, and reporting by continuing our implementation of the iComplaints database and maintaining robust internal controls related to data tracking and monitoring.

OMWI will continue to meet with the FDIC Chief Human Capital Officer to ensure that personnel programs, policies, and procedures conform to EEO laws, guidance, and management directives.

Barrier Analysis

The FDIC will continue to focus on collecting and analyzing various workforce data to comply with the EEOC's guidelines for a model Equal Opportunity program, particularly by incorporating mechanisms for identifying triggers, analyzing barriers, and developing actions plans to eliminate barriers. The FDIC will evaluate possible barriers for groups that show low participation rates in the workforce, particularly identifying barriers to the advancement of minorities and women to senior management, Hispanic representation throughout the agency, and effective hiring of persons with disabilities.

OMWI will review feedback from employee surveys, exit interviews, listening sessions, and training to identify opportunities for improvement of the EEO program.

Policies

OMWI will continue its efforts to update and implement FDIC policies and procedures with respect to equal opportunity, including the following circulars and directives:

- 2710.1 - Equal Opportunity Policy
- 2710.2 - EEOC Discrimination Complaint Process
- 2710.3 - Anti-Harassment Program
- 2710.4 - FDIC Discrimination Complaint Process
- 2710.5 – Reasonable Accommodation Program
- 2710.7 – Collection and Maintenance of EEO Statistics
- 2710.8 – Chairman's Diversity Advisory Council (CDAC)
- 2710.10 – Employee Resource Group (ERG) Program
- 2710.12 - Non-Discrimination in FDIC Conducted Education and Training Programs and Outreach Activities
- 2710.15 - Accessibility to FDIC Programs and Activities

Training

OWMI will conduct training to increase awareness among employees, managers, and supervisors regarding how to prevent sexual harassment in the workplace. In collaboration with Corporate University, OMWI will also update the EEO and Diversity training for managers and supervisors.

Based on the most-filed EEO bases and issues, OMWI will provide anti-harassment training for all employees, and collaborate with Corporate University to provide training to supervisors and managers that offers proactive approaches to resolving issues stemming from alleged violations of personnel policies and practices, including performance management and hiring/promotion.

OMWI will also revise the No FEAR Act online training to include any No FEAR Act updates, and include additional EEO information focusing on noted complaint trends for the next training cycle.

FDIC No FEAR Act Training Plan

The FDIC has included the “No FEAR Act” training course in its Learning Management System, pursuant to the requirements of the No FEAR Act training plan. The online training course provides instruction on all topics required by the No FEAR Act, and satisfies the initial and biennial training requirements of the No FEAR Act.

New FDIC employees are advised during the new employee orientation program of the requirement to complete the No FEAR Act training within 90 days of hire. OMWI continues to work with Human Resources and Corporate University to ensure that all new employees receive the mandatory No FEAR Act training.

APPENDIX A

CHAIRMAN EEO POLICY STATEMENT





EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

October 22, 2020

When I joined the FDIC two years ago, I affirmed my commitment to a workforce that is diverse and inclusive, reflecting the communities we serve, and respecting the value and contributions of all employees. Since then, we have steadily increased diversity across the organization, but the journey to truly eliminate inequality continues.

I welcome this opportunity to reaffirm my commitment to the principles of equal opportunity, non-discrimination, diversity and inclusion (D&I), and equal access for all individuals across all our activities.

The FDIC will continue its work to uphold equal opportunity for all employees and applicants for employment regardless of race, religion, color, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age, and genetic information.

This commitment will be reflected in all of the FDIC's personnel and employment programs, management practices, and decisions, including our recruitment and hiring; promotions, transfers, and reassignments; training and career development; benefits; and more. We will provide reasonable accommodations to employees and applicants with disabilities, and for religious observances and practices, to ensure a fair and level playing field for all.

The FDIC does not tolerate discrimination, harassment (including sexual harassment), or retaliation, and every allegation of these unlawful behaviors is taken seriously. FDIC managers and supervisors must address harassment allegations immediately and appropriately.

Employees should avail themselves of the resources available, including the EEO complaint process, if they are being treated unfairly. Retaliation against individuals for their participation in the EEO complaint process or opposition to discriminatory practices is prohibited.

Earlier this year, I announced a number of [specific initiatives we have undertaken to increase diversity in our workforce and our leadership](#), to create a culture of excellence that supports and sustains high performance, to educate all employees on the importance of D&I, and to identify and eliminate barriers to successfully meeting our strategic D&I objectives. This work will continue and as we cultivate an FDIC that is accessible, inclusive, and diverse—that treats everyone with dignity and respect and embraces our differences.

For more information on the FDIC's Equal Opportunity Policy and the Anti-Harassment Program, I encourage you to read [Circular 2710.1](#) and [Circular 2710.3](#). Bargaining unit employees may wish to review the grievance procedures included in the FDIC-NTEU Collective Bargaining Agreement related to equal employment opportunity.

A handwritten signature in cursive script that reads "Jelena McWilliams".

Jelena McWilliams
Chairman

APPENDIX B

SUMMARY OF FDIC COMPLAINT DATA



APPENDIX B1

Federal Court Data



APPENDIX B2

EEO DATA POSTED PURSUANT to the No FEAR Act



No FEAR Act EEO Data

Data as of 10/30/2020

Complaint Activity

Complaint Activity	2015	2016	2017	2018	2019	FY2020 YTD
Number of Complaints Filed	33	40	30	33	43	31
Number of Complainants	29	34	28	30	39	30
Repeat Filers	4	4	2	3	3	1

Complaints by Basis

Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.

	2015	2016	2017	2018	2019	FY2020 YTD
Race	17	23	17	14	23	15
Color	6	11	3	2	5	4
Religion	1	3	0	0	3	3
Reprisal	18	18	14	21	22	17
Sex	15	20	17	12	21	12
PDA	0	1	1	0	0	0
National Origin	7	9	3	2	7	3
Equal Pay Act	0	0	3	0	1	0
Age	12	24	10	12	18	12
Disability	10	10	12	15	13	7
Genetic Information	1	0	0	0	0	0
Non-EEO	5	4	3	2	3	2

Number of Complaints Alleging Each Type of Claim

Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.

	2015	2016	2017	2018	2019	FY2020 YTD
Appointment/Hire	4	8	3	3	3	3
Assignment of Duties	6	6	5	4	7	3
Awards	2	1	0	2	1	1
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	2	1	1
Warning	0	0	4	7	2	1
Reprimand	0	0	1	1	0	2
Removal	0	0	0	1	4	3
Suspension	3	0	1	1	1	0

Other	4	8	2	0	0	0
Duty Hours	0	0	0	0	1	0
Evaluation Appraisal	9	8	10	12	10	6
Examination Test	1	1	0	0	0	0
Harassment						
Non-Sexual	8	13	15	12	14	6
Sexual	0	0	1	3	1	4
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	3	2	3	0	3	0
Promotion Non-Selection	7	11	7	10	12	9
Reassignment						
Denied	4	1	0	2	2	1
Directed	1	1	2	1	0	0
Reasonable Accommodation	2	2	4	5	3	2
Reinstatement	0	0	0	0	0	0
Religious Accommodation		0	0	0	0	0
Retirement	0	0	0	1	0	0
Sex Stereotyping		0	0	0	0	0
Telework		0	4	5	4	1
Termination	4	2	3	2	4	3
Terms/Conditions of Employment	4	2	8	8	14	8
Time and Attendance	2	6	9	8	7	2
Training	1	2	4	5	3	2
Other	9	8	2	0	0	0

Processing Time						
	2015	2016	2017	2018	2019	FY2020 YTD
Complaints pending during fiscal year						
Average number of days in investigation	178	179	197	187	201	200
Average number of days in final action	45	40	38	32	36	41
Complaints pending during fiscal year where hearing was requested						
Average number of days in investigation	190	193	213	195	202	201
Average number of days in final action	33	34	11	27	22	39
Complaints pending during fiscal year where hearing was not requested						
Average number of days in investigation	148	172	173	165	197	199
Average number of days in final action	48	45	48	39	67	38

Complaints Dismissed by Agency						
						FY2020

	2015	2016	2017	2018	2019	YTD
Total Complaints Dismissed by Agency	6	3	8	2	3	2
Average Days pending prior to dismissal	96	517	360	128	103	109

Complaints Withdrawn by Complainants						
	2015	2016	2017	2018	2019	FY2020 YTD
Total Withdrawn by Complainants	2	3	0	8	0	1

Total Final Actions Finding Discrimination						
	2015	2016	2017	2018	2019	FY2020 YTD
Total Number of Findings	1	0	0	0	1	0
Without Hearing	0	0	0	0	1	0
With Hearing	1 (100%)	0	0	0	0	0

Findings of Discrimination Rendered by Basis						
<i>Note: Complaints can be filed alleging multiple Bases. The sum of the bases may not equal total complaints filed.</i>						
	2015	2016	2017	2018	2019	FY2020 YTD
Total Number of Findings	1	0	0	0	1	0
Race	0	0	0	0	0	0
Color	0	0	0	0	0	0
Religion	0	0	0	0	0	0
Reprisal	1 (100%)	0	0	0	0	0
Sex	0	0	0	0	0	0
National Origin	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0
Age	0	0	0	0	0	0
Disability	0	0	0	0	1	0
Genetic Information	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0

Findings After Hearing						
	2015	2016	2017	2018	2019	FY2020 YTD
Findings After Hearing	1	0	0	0	0	0
Race	0	0	0	0	0	0
Color	0	0	0	0	0	0
Religion	0	0	0	0	0	0
Reprisal	1 (100%)	0	0	0	0	0
Sex	0	0	0	0	0	0
National Origin	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0
Age	0	0	0	0	0	0
Disability	0	0	0	0	0	0

Genetic Information	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0
Findings Without Hearing						
Findings Without Hearing	0	0	0	0	1	0
Race	0	0	0	0	0	0
Color	0	0	0	0	0	0
Religion	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0
Sex	0	0	0	0	0	0
National Origin	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0
Age	0	0	0	0	0	0
Disability	0	0	0	0	1	0
Genetic Information	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue						
	2015	2016	2017	2018	2019	FY2020 YTD
Total Number of Findings	1 (100%)	0	0	0	1	0
Appointment/Hire	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0
Awards	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0
Suspension	0	0	0	0	0	0
Removal	0	0	0	0	0	0
Other	1 (100%)	0	0	0	0	0
Duty Hours	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0
Examination Test	0	0	0	0	0	0
Harassment						
Non-Sexual	0	0	0	0	0	0
Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	0	0
Promotion Non-Selection	0	0	0	0	0	0
Reassignment						
Denied	0	0	0	0	0	0
Directed	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0

Retirement	0	0	0	0	0	0
Termination	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	1	0
Time and Attendance	0	0	0	0	0	0
Training	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0
Findings After Hearing						
Findings After Hearing	1	0	0	0	0	0
Appointment/Hire	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0
Awards	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0
Suspension	0	0	0	0	0	0
Removal	0	0	0	0	0	0
Other	1 (100%)	0	0	0	0	0
Duty Hours	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0
Examination Test	0	0	0	0	0	0
Harassment						
Non-Sexual	0	0	0	0	0	0
Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	0	0
Promotion Non-Selection	0	0	0	0	0	0
Reassignment						
Denied	0	0	0	0	0	0
Directed	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0
Training	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0
Findings Without Hearing						
Findings Without Hearing	0	0	0	0	1	0
Appointment/Hire	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0
Awards	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0

Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0
Suspension	0	0	0	0	0	0
Removal	0	0	0	0	0	0
Other	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0
Examination Test	0	0	0	0	0	0
Harassment						
Non-Sexual	0	0	0	0	0	0
Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	0	0
Promotion Non-Selection	0	0	0	0	0	0
Reassignment						
Denied	0	0	0	0	0	0
Directed	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	1	0
Time and Attendance	0	0	0	0	0	0
Training	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status						
	2015	2016	2017	2018	2019	FY2020 YTD
Total Complaints from previous Fiscal Years	41	34	49	41	32	25
Total Complainants	35	28	37	34	27	22
Number of Complaints Pending						
Investigation	0	0	0	0	0	0
ROI issued, pending Complainant's action	0	1	0	1	0	0
Hearing	41	31	46	36	28	25
Final Action	0	3	0	4	4	0
Appeal	14	24	11	4	11	15

Complaint Investigations						
	2015	2016	2017	2018	2019	FY2020 YTD
Pending Complaints Where						

Investigations Exceed Required Time Frames	0	0	0	0	1	0
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APPENDIX C

FDIC POLICIES RELATING TO ANTI-DISCRIMINATION



APPENDIX C-1

CIRCULAR 2710.1 – Equal Opportunity Policy





FEDERAL DEPOSIT INSURANCE CORPORATION

DIRECTIVE SYSTEM

TYPE AND NUMBER

Circular 2710.1

CONTACT

Melodee Brooks

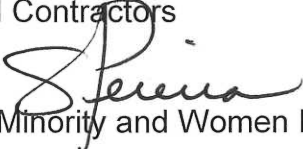
TELEPHONE NUMBER

(703) 562-6225

DATE

November 20, 2015

DATE OF CANCELLATION (*Bulletins Only*)

TO: All Employees and Contractors
FROM: Segundo Pereira 
Director, Office of Minority and Women Inclusion
SUBJECT: Equal Opportunity Policy

1. Purpose To state the Federal Deposit Insurance Corporation's (FDIC) commitment to equal opportunity, affirmative employment, and diversity and inclusion principles. Also, to affirm the policy prohibiting discriminatory practices in the FDIC workplace and in any of its programs or activities and to promote the fair inclusion of minority and women-owned businesses (MWOBs) and small disadvantaged businesses (SDBs) in procurement opportunities and business activities at all levels.

2. Revision FDIC Circular 2710.1, Corporation's Policy on Equal Opportunity, dated October 19, 2010, is hereby revised and superseded.

3. Scope This Circular applies to all employees, applicants for employment, and persons doing business, with or for the FDIC.

4. Background The FDIC is committed to the principles of equal opportunity in all of its programs, policies, and practices and promotes diversity and inclusion in its workforce as well as in its programs and activities. The Director, Office of Minority and Women Inclusion (OMWI), has the delegated responsibility for the FDIC diversity and inclusion, civil rights, and minority and women outreach programs. These programs ensure that the FDIC workplace is inclusive, free from unlawful discrimination and harassment, and provides equal opportunity and access to all employment and business activities.

5. Policy It is the policy of the FDIC to prohibit discrimination and harassment in its workplace and in all of its programs and activities based on race, color, religion, sex (including pregnancy,

Policy (cont.)

equal pay, gender identity, and sexual orientation), national origin, disability (physical and/or mental), age (40 years or older), genetic information (information about an individual's genetic tests; or information about the genetic tests, or the manifestation of a disease or disorder in the individual's family members), status as a parent, and retaliation (for participating in the EEO complaint process or opposing discriminatory practices).

All employees have a responsibility to implement this policy by their conduct, decisions, and actions. Further, every effort shall be made to resolve complaints at the lowest level possible.

The FDIC is fully committed to removing any unlawful, or otherwise prohibited discrimination from its employment and personnel policies, procedures, programs, practices, and operations. All aspects of personnel operations, (including recruitment, hiring, promotions, training, awards, reorganizations, and retention of employees) shall be conducted consistent with equal employment opportunity principles, FDIC policies, applicable Federal laws, regulations, and executive orders.

Any unlawful or improper conduct that undermines the FDIC's efforts to prohibit discrimination will not be tolerated. Employees who commit such acts of prohibited discrimination may be subject to disciplinary action up to and including termination from employment. Moreover, supervisors or managers who fail to take appropriate disciplinary action against subordinates who commit acts of prohibited discrimination, including retaliation against or harassment of employees who engage in activity protected by this policy statement, are also subject to disciplinary action.

It is the policy of the FDIC to promote diversity in its workforce and inclusion in all of its programs and activities and provide employees with a work environment that embodies excellence and that acknowledges and honors the diversity of its employees.

The FDIC is fully committed to utilizing consistent standards and procedures to ensure the fair inclusion and utilization of MWOBs and SDBs in FDIC procurement opportunities and business activities, to the maximum extent possible.

6. Authorities

The sources of authority for the FDIC's equal opportunity policy may be found in the following Federal statutes, regulations, and executive orders:

a. Federal Statutes

- (1) Title VII of the Civil Rights Act of 1964, as amended, makes it unlawful for a Federal employer to discriminate against an employee (or applicants for employment) based on

Authorities (cont.)

race, color, religion, sex (including pregnancy), national origin, or retaliation, 42 U.S.C. §2000e-16;

(2) Equal Pay Act of 1963, as amended, protects men and women who perform substantially equal work within the same organization from sex-based wage discrimination, 29 U.S.C. §206(d);

(3) The Rehabilitation Act of 1973, as amended, makes it unlawful to discriminate or retaliate against qualified individuals with disabilities including Federal employees, applicants for employment or the public and requires Federal agencies to provide reasonable accommodations and accessibility to all FDIC programs and activities including employment and facilities, 29 U.S.C. §791;

(4) The Age Discrimination in Employment Act of 1967, as amended, makes it unlawful to discriminate or retaliate against an employee (or applicant for employment) who is 40 years of age or older, 29 U.S.C. §621;

(5) Section 1216(a) and (c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, applies Executive Order 11478, as amended, to the FDIC, 12 U.S.C. §1833e(a) and provides for a Minority and Women Outreach Program to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women in all contracts entered into by the FDIC;

(6) Titles I and V of the Americans with Disabilities Act of 1990, as amended, define “a qualified individual with a disability” for purposes of the Rehabilitation Act of 1973, as amended, and excludes individuals engaged in the illegal use of drugs, 42 U.S.C. §§12102, 12114;

(7) Civil Rights Act of 1991, as amended, provides monetary damages for employees (and applicants for employment) in cases of intentional employment discrimination based on race, color, religion, sex, sexual harassment, national origin, or disability, 42 U.S.C. §1981a;

(8) Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, (the No FEAR Act) requires each Federal agency to post summary statistical data pertaining to complaints of employment discrimination filed against it by employees and applicants for employment, 5 U.S.C. §2301;

(9) Americans with Disabilities Act Amendments Act of 2008, expands the definition of a disability by reinstating a broad scope of protection to be available under the Americans with

Authorities (cont.)

Disabilities Act, 42 U.S.C. §12101;

(10) Title II of the Genetic Information Nondiscrimination Act of 2008, makes it unlawful for an employer to discriminate against an employee (or applicants for employment) based on genetic information (information about an individual's genetic tests; or information about the genetic tests, or the manifestation of a disease or disorder in the individual's family members, 42 U.S.C. §2000ff;

(11) Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, provides for the development of standards for equal employment opportunity in the FDIC workforce, increased participation of MWOBs in FDIC programs and activities, and assessing the diversity policies and practices of entities regulated by the FDIC.

b. Federal Regulations

(1) 5 C.F.R. Part 724, U.S. Office of Personnel Management's No FEAR Act notice posting and training requirements;

(2) 12 C.F.R. Part 361, FDIC's minority and women outreach program contracting guidelines;

(3) 12 C.F.R. Part 352, FDIC's nondiscrimination on the basis of disability guidelines;

(4) 29 C.F.R. Part 1604, Equal Employment Opportunity Commission's (EEOC) sex discrimination guidelines;

(5) 29 C.F.R. Part 1605, EEOC's religious discrimination guidelines;

(6) 29 C.F.R. Part 1606, EEOC's national origin discrimination guidelines; and

(7) 29 C.F.R. Part 1614, EEOC's federal sector EEO guidelines including No FEAR Act public website postings.

c. Executive Orders. These are orders issued by the President pursuant to the Constitution and other Federal statutes which may be applicable to the FDIC.

(1) Executive Order 11478 (1969), as amended, prohibits discrimination against Federal employees (and applicants for employment) based on race, color, religion, sex, age, national origin, disability, sexual orientation, gender identity, or status as a parent;

(2) Executive Order 13087 (1998), prohibits discrimination

Authorities (cont.)

against Federal employees (and applicants for employment) based on sexual orientation;

(3) Executive Order 13145 (2000), prohibits discrimination against Federal employees (and applicants for employment) based on genetic information;

(4) Executive Order 13152 (2000), prohibits discrimination against Federal employees (and applicants for employment) based on the individual's status as a parent;

(5) Executive Order 13160 (2000), prohibits discrimination based on race, color, religion, sex, national origin, disability, age, sexual orientation, or status as a parent in federally conducted education and training programs;

(6) Executive Order 13163 (2000), increases employment opportunities in the Federal Government for 100,000 individuals with disabilities;

(7) Executive Order 13164 (2000), requires Federal agencies to establish procedures to facilitate the provision of reasonable accommodation for individuals with disabilities;

(8) Executive Order 13166 (2000), improves access to Federal programs and activities for persons with limited English proficiency;

(9) Executive Order 13171 (2000), improves the representation of Hispanics in Federal employment;

(10) Executive Order 13548 (2010), increases Federal employment of individuals with disabilities; and

(11) Executive Order 13583 (2011), requires Federal agencies to develop and implement a more comprehensive, integrated, and strategic focus on diversity and inclusion.

7. Accountability and Monitoring

Each Division and Office has a continuing responsibility to identify and implement strategies for achieving and maintaining a diverse workforce at all levels. These strategies shall be developed in concert with OMWI and the Division of Administration (DOA), Human Resources Branch, consistent with the FDIC's Affirmative Employment Program, whenever it has been determined that a statistically significant imbalance exists in a Division or Office work force. Each division and office must review its workforce statistics at least annually and adjust its strategies as appropriate.

Managers and supervisors must work toward developing and implementing positive initiatives that achieve measurable results

Accountability and Monitoring (cont.)

with regard to workforce diversity and contracting. Managers and supervisors are assessed regarding their performance in these areas.

An assessment of the workforce profile will be prepared and disseminated annually by OMWI to Division and Office Directors and to the Office of the Chairman. Upon availability of contract management data, the Acquisition Services Branch, DOA, will prepare quarterly statistical charts on the use of MWOBs and SDBs for contracting and disseminate this information to the Office of the Chairman and to Division and Office Directors.

8. Guidelines and Procedures

a. The procedures for initiating and processing EEOC complaints of alleged employment discrimination are contained in FDIC [Circular 2710.2, EEOC Discrimination Complaint Process](#).

b. The procedures for initiating and processing FDIC complaints of alleged employment discrimination are contained in FDIC [Circular 2710.4, FDIC Discrimination Complaint Process](#).

c. The procedures for initiating a complaint of harassment discrimination are contained in FDIC [Circular 2710.3, Anti-Harassment Program](#).

d. The FDIC's Equal Employment Opportunity Program ensures equal access to employment for all qualified individuals through the implementation of the EEOC's Management Directive 715, and the U.S. Office of Personnel Management's Disabled Veterans Affirmative Action Program. These programs assist in the identification and elimination of barriers to recruitment, hiring, retention, and promotion of women, minorities, individuals with disabilities, and disabled veterans.

e. The procedures for providing reasonable accommodation to individuals with disabilities are contained in FDIC [Circular 2710.5, Procedures for Providing Reasonable Accommodation to Individuals with Disabilities](#).

f. Information on the FDIC's Contracting Outreach Program is available in FDIC [Circular 3700.16, FDIC Acquisition Policy Manual \(APM\) and the FDIC's Guide for Outside Counsel](#).

g. The FDIC's Minority and Women Outreach Program may be amended from time to time to establish rules and strategies for achieving diversity in the awarding of contracts to MWOBs and SDBs. See 12 C.F.R. Part 361, § 342 Dodd-Frank Act, and FDIC [Circular 2710.14, Corporate Outreach Program](#).

9. Principal OMWI Officials

Questions relating to complaint processing, Affirmative Employment, Diversity and Inclusion, and/or the Minority and Women Outreach Program:

- a. Chief, Complaints Processing Branch
(703) 562-6073 or for TTY (703) 562-2473
 - b. Chief, Diversity and Affirmative Employment Section
(703) 562-6062
 - c. Chief, Minority and Women Business and Diversity and Inclusion Branch (703) 562-2623
-

10. Effective Date

The provisions of this Circular are effective immediately.

APPENDIX C-2

CIRCULAR 2710.3 – Anti-Harassment Program





FEDERAL DEPOSIT INSURANCE CORPORATION

DIRECTIVE SYSTEM

TYPE AND NUMBER Circular 2710.3	
CONTACT Tony Pagano	TELEPHONE NUMBER (703) 562-6062
DATE December 8, 2015	
DATE OF CANCELLATION (<i>Bulletins Only</i>)	

TO: All Employees and Contractors

FROM: Segundo Pereira
Director, Office of Minority and Women Inclusion

SUBJECT: Anti-Harassment Program

1. Purpose

To document the Federal Deposit Insurance Corporation’s (FDIC) Anti-Harassment Program and outline the requirements for FDIC employees to report allegations of harassment. To describe managers' and supervisors' responsibilities to maintain a harassment-free workplace and to take prompt and effective action when allegations of harassment arise. Also, to identify roles and responsibilities for the coordination of anti-harassment efforts at FDIC, and provide guidance and instruction to FDIC supervisors and managers on receiving, coordinating, reviewing, processing, and resolving allegations of unlawful harassment.

It is important that all employees understand FDIC’s policy prohibiting harassment and take all steps within their power to ensure that this form of discrimination does not exist in the FDIC.

2. Revision

FDIC Circular 2710.3, FDIC’s Anti-Harassment Program, dated February 4, 2015, is hereby revised and superseded.

3. Scope

The Anti-Harassment Program applies to all employees and covers harassment between supervisors and subordinates, between employees, by employees conducting business for the FDIC outside the workplace, and non-employees while conducting business in the FDIC’s workplace.

The Anti-Harassment Program is implemented in accordance with the legal requirements of the applicable laws, regulations, and guidance promulgated by the U.S. Equal Employment Opportunity Commission (EEOC).

4. Background

The FDIC is committed to providing its employees with a workplace that is free of harassment. The Director, Office of Minority and Women Inclusion (OMWI), has the delegated responsibility for the FDIC diversity and inclusion, civil rights, and minority and women outreach programs. These programs seek to ensure that the FDIC workplace is inclusive, free from unlawful discrimination and harassment, and provides equal opportunity and access to all employment and business activities.

5. Definitions

Terms used in this Circular are defined below:

- a. **Anti-Harassment Program Coordinator.** The designated OMWI employee who is responsible for overseeing the implementation of the Anti-Harassment Program.
- b. **Fact-Finder.** An individual who may be assigned by the Division of Administration (DOA), Human Resources Branch (HRB), Labor and Employee Relations Section (LERS), to conduct a prompt, independent, thorough, and impartial investigation into an alleged harassment.
- c. **Harassment/Harassing Conduct.** Whether in violation of federal law or regulation, is defined as unwelcome verbal or physical misconduct. Examples of harassing conduct prohibited by the Anti-Harassment Program may include, but are not limited to, the following:
 - (1) Threatening that rejection of sexual overtures will affect assignments, appointments, promotions, transfers, or evaluations;
 - (2) Belittling caricatures or objects depicting persons of a particular race, national origin, religion, or other protected class;
 - (3) Telling derogatory religious, racial, or ethnic jokes or stories;
 - (4) Teasing, mimicking, or repeatedly commenting on an individual's disability, accent, or other protected class;
 - (5) Making offensive comments, jokes, or suggestions about an employee's gender;
 - (6) Making obscene or lewd comments, slurs, jokes, epithets, suggestions, or gestures;

Definitions (cont.)

(7) Commenting repeatedly on an employee's body or sexual characteristics;

(8) Displaying nude or sexually suggestive objects, pictures, images, or cartoons;

(9) Continuing prohibited behavior after a co-worker has objected;

(10) Laughing at, ignoring, or retaliating against an employee who raises a harassment allegation; or

(11) Engaging in bullying, intimidating, or threatening behavior with respect to an individual's protected class.

d. **Protected Class.** An individual's membership in a group characterized by race, color, religion, sex (including pregnancy, equal pay, gender identity and sexual orientation), national origin, disability, age, genetic information, status as a parent, or participation in protected activity under anti-discrimination statutes or Executive Orders.

e. **Unlawful Harassment/Hostile Work Environment.** Involves discriminatory conduct on the basis of an individual's membership in a protected class, where such conduct is so objectively offensive as to alter the conditions of the victim's employment (i.e., the harassment culminates in a tangible employment action or was sufficiently severe or pervasive to create a hostile work environment).

6. Authorities

Unlawful Harassment is a form of discrimination that is prohibited under Title VII of the Civil Rights Act of 1964, as amended; the Rehabilitation Act, as amended; the Age Discrimination in Employment Act, as amended; and the Genetic Information Nondiscrimination Act of 2008. FDIC policy prohibits harassment pursuant to Executive Order 13087 (May 28, 1998), prohibiting discrimination in employment based on sexual orientation and Executive Order 13152 (May 2, 2000), prohibiting discrimination in employment based on status as a parent.

7. Policy

It is FDIC's policy to strictly prohibit harassment in the workplace, including unlawful harassment in the workplace based on a prohibited basis: race, color, religion, gender (including sexual or nonsexual, pregnancy, gender identity or sexual orientation), national origin, disability (physical and/or mental), age (40 years or older), genetic information (information about an individual's genetic tests, or the manifestation of a disease or disorder in the individual's family members), status as a parent, and retaliation

Policy (cont.)

(for participating in the EEO complaint process or opposing discriminatory practices).

The FDIC will not condone harassment in any form. Any employee who is found to have harassed anyone while conducting FDIC business shall be subject to disciplinary action, up to and including removal from FDIC employment. Managers and supervisors who participate in or fail to take immediate and appropriate action on reported incidents of harassment, or who retaliate against employees who report such incidents or who file harassment complaints, are also subject to appropriate (including disciplinary) action for failure to perform their managerial or supervisory duties.

The FDIC will not tolerate retaliation against any employee for reporting harassment under this or any other non-discrimination policy or process. Neither will FDIC tolerate retaliation against any employee for assisting or participating in a fact-finding inquiry or investigation about a reported harassment.

8. Roles and Responsibilities

Specific roles and responsibilities pertaining to the Anti-Harassment Program are as follows:

a. **Employees.** It is the responsibility of every employee, regardless of position, grade, or occupation to refrain from engaging in harassing conduct. An employee can prevent or eliminate harassment by:

- (1) Examining his/her behavior on the job, or when conducting FDIC business, by eliminating inappropriate conduct;
- (2) Supporting and meeting the requirements of the Anti-Harassment Program; and
- (3) Identifying and taking individual action to stop inappropriate behavior by communicating directly and immediately with the person(s) whose behavior is offensive, or immediately bringing the matter to the attention of supervisory or managerial officials, or in the case of unlawful harassment, the Anti-Harassment Program Coordinator, OMWI.

Note: Employees must cooperate in any fact-finding inquiry or investigation regarding an allegation of harassment.

b. **Supervisors and Managers.** It is the responsibility of all supervisors and managers to maintain a work environment free of harassment and to take all allegations of harassment seriously. To this end, supervisors and managers are required to take

Roles and Responsibilities (cont.)

immediate action to assess whether or not the alleged harassment occurred. Supervisors and managers must:

- (1) Prevent and take appropriate action with respect to any alleged prohibited conduct that can be construed as harassment;
- (2) Take prompt, appropriate, and effective action when presented with an allegation of harassment; and
- (3) Seek assistance in conducting an inquiry or investigation, if necessary, and how best to correct the problem, by consulting with:
 - (a) The Anti-Harassment Program Coordinator, OMWI; and/or
 - (b) A Human Resources Specialist in LERS, HRB, DOA

(Note: Office of Inspector General (OIG) supervisors and managers should consult with the OIG Human Resources in the OIG); and/or

 - (c) The Assistant General Counsel, any Senior or Field Counsel, in the Labor, Employment & Administration Section (LEAS), Legal Division.

c. Anti-Harassment Program Coordinator. The Anti-Harassment Program Coordinator is responsible for:

- (1) Coordinating program implementation with LERS, DOA; LEAS, Legal Division, and other Divisions and Offices as appropriate;
- (2) Advising and providing technical assistance to managers and supervisors in preventing and addressing allegations of unlawful harassment;
- (3) Monitoring the effectiveness of the Anti-Harassment Program by maintaining information on the number of allegations of unlawful harassment, bases for the allegations, actions taken, and assessing trends and patterns to develop prevention strategies;
- (4) Recommending program changes to enhance the Anti-Harassment Program;
- (5) Working with other FDIC program officials to effectively prevent and eliminate unlawful harassment in the workplace through a continuing education program; and

Roles and Responsibilities (cont.)

(6) Ensuring that the Anti-Harassment Program policies and procedures are posted on the OMWI website and publicized throughout FDIC, including dissemination of the policy and procedures to employees through written informational materials.

d. **Fact-Finder.** The Fact-Finder is responsible for:

- (1) Conducting an expedited investigation into the alleged harassment;
- (2) Preparing a report of factual findings, as necessary, and submitting the report to the appropriate management official; and
- (3) Maintaining all documents collected relevant to the fact-finding inquiry in accordance with [FDIC Circular 1210.1, FDIC Records and Information Management \(RIM\) Policy Manual](#).

9. Anti-Harassment Complaint Procedures

The procedures outlined in this Section will assist FDIC in fulfilling its obligations to: (a) prevent harassment before it becomes severe or pervasive; (b) conduct a prompt, thorough, and impartial inquiry or investigation into allegations of harassment; and (c) take prompt and appropriate corrective action when FDIC determines that harassing conduct has occurred.

a. **Initiator Action.** Any employee who believes that he/she has been subjected to harassment prohibited by this policy is expected to report the matter immediately to:

- (1) A supervisor or manager in his/her chain of supervision; or
- (2) The Anti-Harassment Program Coordinator, OMWI.

To the maximum extent possible, FDIC will protect the confidentiality of employees who allege harassment. Since FDIC cannot conduct an effective fact-finding inquiry or investigation without revealing certain information to the alleged harasser and potential witnesses, FDIC cannot guarantee complete confidentiality. However, FDIC will share information and records about the allegation only with those who have a need to know.

b. **Management Action.** Upon receiving an allegation of harassment or witnessing conduct that may be perceived as harassment, the supervisor and/or manager (or other official to whom the harassment was reported) must immediately assess the situation to determine the severity of the alleged misconduct

**Anti-Harassment
Complaint
Procedures (cont.)**

and whether any immediate interim corrective action is required to ensure that further prohibited harassment does not occur. Examples of such interim measures may include, but are not limited to:

- (1) Making schedule changes to avoid contact between the parties;
- (2) Transferring the alleged harasser; or
- (3) Placing the alleged harasser on non-disciplinary leave with pay pending the conclusion of the inquiry or investigation.

It is important that the supervisor and manager (or other official to whom the harassment was reported) promptly consult with a Human Resources Specialist, LERS, DOA; the Anti-Harassment Program Coordinator, OMWI, and/or LEAS Assistant General Counsel or Senior or Field Counsel, Legal Division and request assistance in conducting a fact-finding inquiry, investigation, or other action (including interim measures), as appropriate. Management should ensure that the individual who conducts an inquiry will objectively gather the relevant facts. The alleged harasser should **not** have supervisory authority over the individual who conducts the inquiry and should **not** have any direct or indirect control over the inquiry.

Where it is appropriate, an independent Fact-Finder will be assigned to conduct a prompt, thorough, and impartial investigation into the alleged harassment. The Fact-Finder will commence the investigation within five (5) business days of assignment.

The Chief, LERS, DOA, will advise the Anti-Harassment Program Coordinator, OMWI that an investigation is being conducted for coordination purposes.

Upon completion of the investigation, a report of findings may be prepared (as appropriate) and provided to the office requesting the investigation and/or to the person responsible for taking corrective action.

c. **Agency Action.** The management official receiving the report will review the results and determine, in consultation with the Human Resources Specialist, LERS, DOA, the appropriate action (including disciplinary) to be taken.

The responsible management official will take prompt and appropriate remedial measures, including disciplinary action; whenever it is determined that harassment has occurred in violation of this policy. Remedial measures should be designed

**Anti-Harassment
Complaint
Procedures (cont.)**

to stop the harassment, correct its effects on the affected employee, and ensure that the harassment does not recur. The remedial measures need not be those that the affected employee requests or prefers, as long as they are effective.

After the fact-finding inquiry or investigation is completed, the management official and/or Human Resources Specialist, LERS, DOA, will notify the employee raising the alleged harassment and the individual involved in the alleged harassing conduct, in writing, of the completion of the investigation, consistent with the Privacy Act.

**10. Relationship to
Other
Complaint
Procedures**

The Anti-Harassment Program complaint procedures contained in this policy are separate and apart from the Federal EEOC Discrimination Complaint Procedures ([FDIC Circular 2710.2](#)) and the FDIC Discrimination Complaint Procedures ([FDIC Circular 2710.4](#)). Allegations of harassment will be addressed as described in this policy with the intent of taking prompt and appropriate corrective action to eliminate harassing conduct. An inquiry or investigation conducted pursuant to the Anti-Harassment Program may occur or continue, regardless of whether the employee has initiated the EEO complaint process.

11. Training

The OMWI conducts or provides training for managers, supervisors, and employees on the Anti-Harassment Program. The training includes information on the legal definition of unlawful harassment, conduct that constitutes harassment, the anti-harassment complaint process, and the responsibilities of employees, supervisors, and managers when an allegation of prohibited harassment has been reported. The training also reinforces FDIC's policy against retaliation as a result of reporting or participating in a fact-finding inquiry or investigation regarding a reported allegation of prohibited harassment.

**12. Reporting
Requirements**

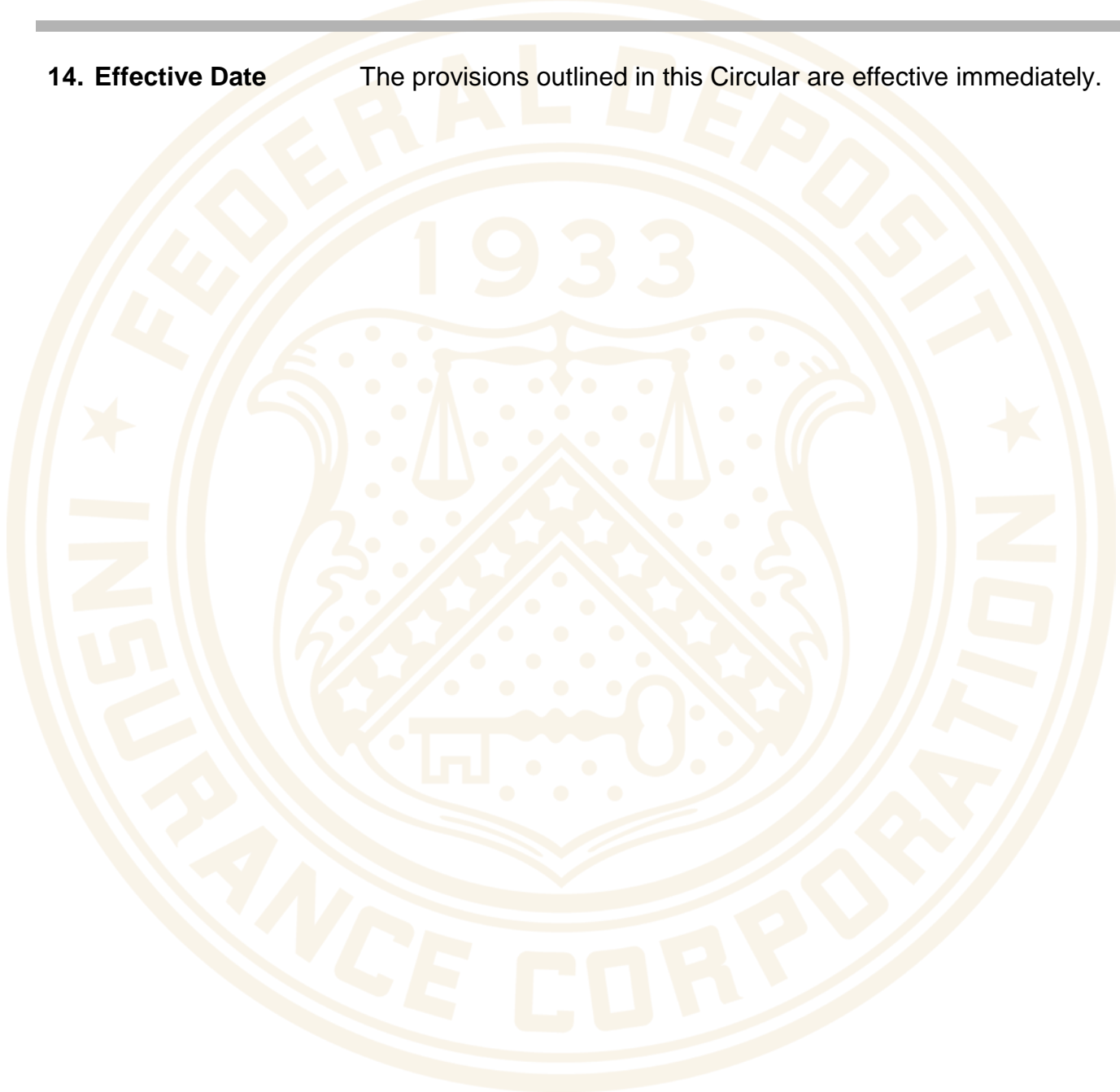
The Anti-Harassment Program Coordinator, OMWI, will obtain information from LERS, DOA and/or LEAS, Legal Division on a quarterly basis on the number of unlawful harassment complaints, the bases and issues, and the actions taken. He/she will use the information to assess patterns and trends for identifying prevention methodologies and training needs for reporting purposes.

13. Contacts

Questions concerning the Anti-Harassment Program may be directed to the Anti-Harassment Program Coordinator at (703) 562-6062, or the FDIC's Complaints Processing Branch, OMWI at (703) 562-6073 or for TTY (703) 562-2473, or by email at AntiHarassment@fdic.gov.

14. Effective Date

The provisions outlined in this Circular are effective immediately.



APPENDIX C-3

CIRCULAR 2400.2 – Whistleblower Protection Rights





FDIC DIRECTIVE

2400.2

Arleas Upton Kea
Deputy to the Chairman and Chief Operating Officer

See approval(s) on Action Log

Whistleblower Protection Rights

PURPOSE

To inform employees of their rights and remedies under federal whistleblower protection laws.

SCOPE

This Directive applies to all current and former FDIC employees and applicants for employment at the FDIC.

AUTHORITIES

- Civil Service Reform Act, Pub. L. No. 95-454, 92 Stat. 1111;
- Depository Institution Employee Protection Remedy (12 U.S.C. 1831j);
- Inspector General Act, as amended (5 U.S.C. Appendix 3, §§ 3(d), 7); and
- The Whistleblower Protection Act and the Whistleblower Protection Enhancement Act (5 U.S.C. 2302(b)(8)-(9)).

FORM(S)

None

REVISION(S)

This Directive supersedes FDIC Circular 2400.1, Whistleblower Protection Rights, dated June 6, 2001.

Action Log

Submission Type <i>(New, Pedestrian Change, Revision)</i>	Date	Approved through Directives Management Center
Revision	07/16/2019	Arleas Upton Kea

Summary of Changes (if applicable)

This Directive has been updated to conform to the standard template and reflect updates by federal law.

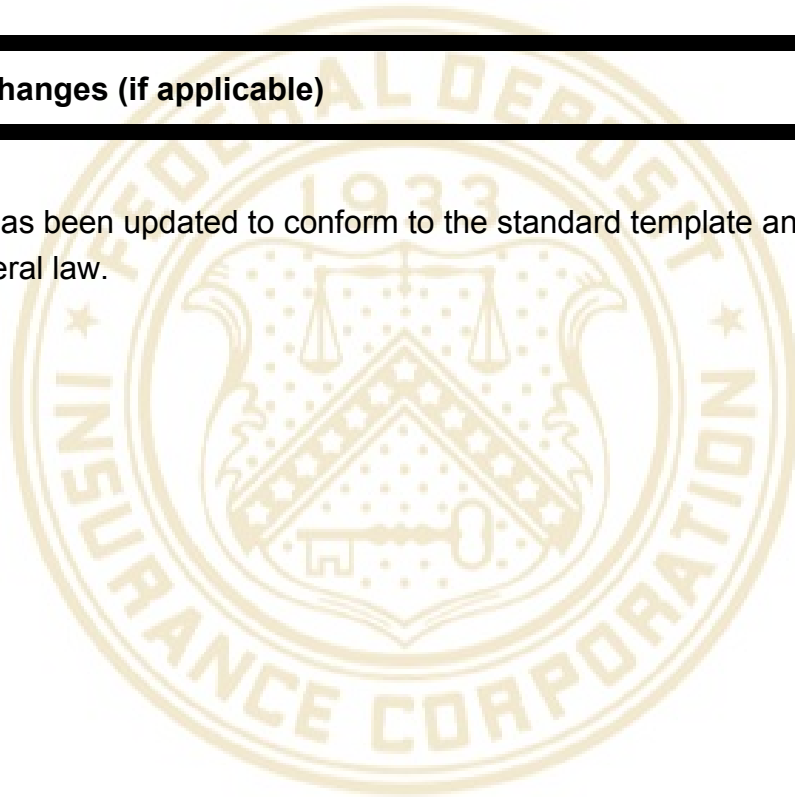


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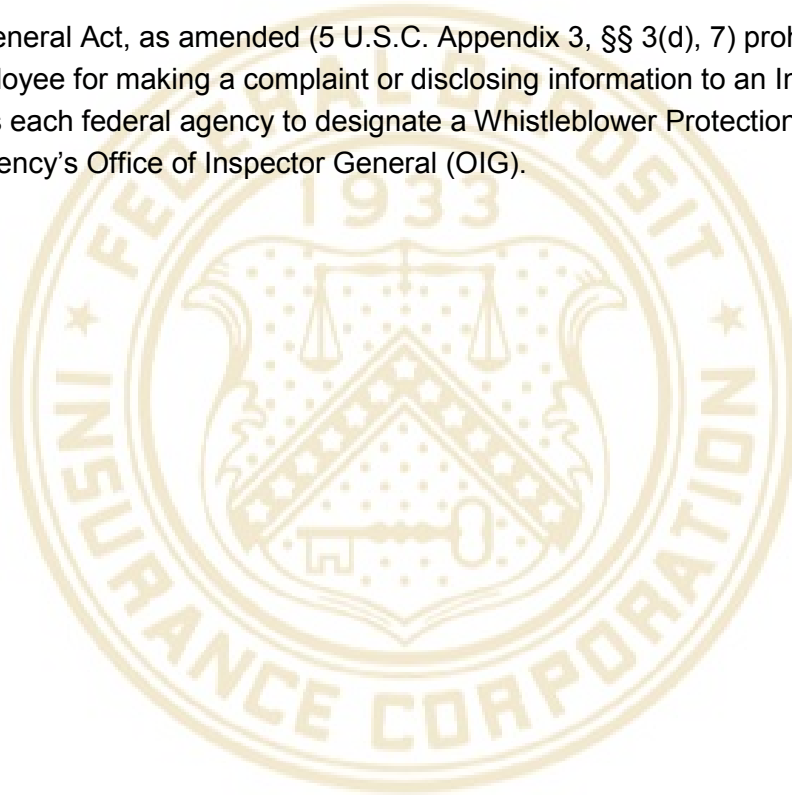
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Background

The Whistleblower Protection Act and the Whistleblower Protection Enhancement Act (5 U.S.C. §§ 2302(b)(8)-(9)) protect federal employees and applicants for employment from retaliatory action or reprisal for whistleblowing and for engaging in certain protected activities.

The Depository Institution Employee Protection Remedy (12 U.S.C. § 1831j) addresses reprisal for whistleblowing activities and is subject to the procedures of the Civil Service Reform Act, Pub. L. No. 95-454, 92 Stat. 1111.

The Inspector General Act, as amended (5 U.S.C. Appendix 3, §§ 3(d), 7) prohibits reprisal against any employee for making a complaint or disclosing information to an Inspector General (IG) and requires each federal agency to designate a Whistleblower Protection Coordinator, located in the agency's Office of Inspector General (OIG).



Policy

A. Whistleblower Protection Act and Whistleblower Protection Enhancement Act (5 U.S.C. §§ 2302(b)(8)-(9))

1. Whistleblower Protection Act

Under the Whistleblower Protection Act, a federal official or employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of protected whistleblowing activities. Whistleblowing is protected unless the disclosure is prohibited by law or required by Executive Order to be kept secret for national security or foreign affairs reasons. Disclosures prohibited by law or required to be kept secret under Executive Order may lawfully be made to Congress, the Office of Special Counsel (OSC), the FDIC IG, or a person designated by the Agency Head to receive such a disclosure. The designee for the FDIC is the Division of Administration (DOA)/Labor and Employee Relations Section (LERS) Assistant Director.

2. Whistleblower Protection Enhancement Act

Under the Whistleblower Protection Enhancement Act, a federal official or employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because that employee or applicant filed a complaint, grievance, or appeal alleging retaliation for whistleblowing; for testifying or lawfully assisting any individual with a complaint, appeal, or grievance right; for cooperating with or disclosing information to the IG or the OSC in accordance with the law; or for refusing to obey an order that would require the individual to violate law, rule, or regulation.

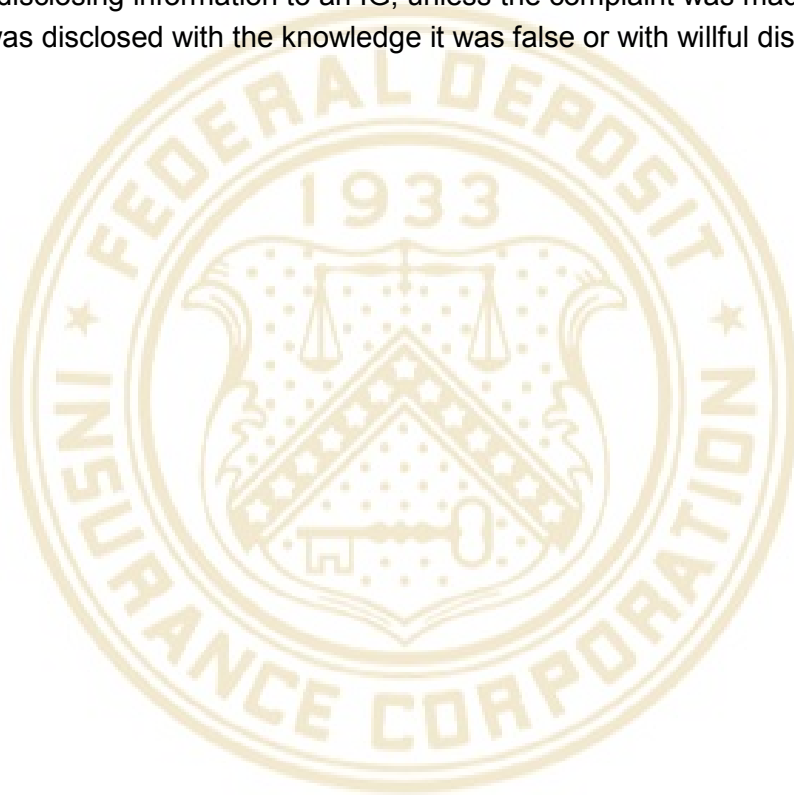
B. Depository Institution Employee Protection Remedy (12 U.S.C. § 1831j)

Subject to the Civil Service Reform Act, 12 U.S.C. § 1831j states an employee of a federal banking agency (including the FDIC) may not be discharged or discriminated against with respect to compensation, terms, conditions or privileges of employment because the employee (or an individual acting at the request of the employee) provided information to any federal banking agency, Federal Home Loan Bank, Federal Reserve Bank, or to the Attorney General regarding any possible violation of law or regulation, gross

mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety by a depository institution or any federal agency or Federal Home Loan Bank, Federal Reserve Bank, any director, officer, or employee of any depository institution or any Federal Home Loan Bank or Federal Reserve Bank, or any officer or employee of the FDIC.

C. Inspector General Act, as amended (5 U.S.C. Appendix 3, §§ 3, 7)

Under the Inspector General Act, any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an IG, unless the complaint was made or the information was disclosed with the knowledge it was false or with willful disregard for its truth or falsity.



Responsibilities

A. LERS Assistant Director

The LERS Assistant Director is designated as the FDIC official to receive disclosures otherwise prohibited by law or required to be kept secret under Executive Order.

B. Whistleblower Protection Coordinator

The Whistleblower Protection Coordinator is designated by the IG to perform the following functions:

1. Educates employees about prohibitions on retaliation for protected disclosures;
2. Educates employees who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures;
3. Informs employees about the means by which they may seek review of any allegation of reprisal for whistleblowing, as well as general information about the timeliness of such cases, the availability of any alternative dispute mechanisms, and avenues for potential relief;
4. Assists the IG in promoting the timely and appropriate handling and consideration of protected disclosures and allegations of reprisal, to the extent practicable, by the IG; and
5. Does not act as a legal representative, agent, or advocate of the employee or former employee.

C. Employees/Applicants

It is the responsibility of each employee of the FDIC to be familiar with the content of this Directive and to understand his/her Whistleblower Protection Rights, and encourage an environment that allows protected disclosures to be made and received without retaliation or the threat of retaliation.

An individual who believes he or she was subjected to a covered personnel action in retaliation for whistleblowing or other protected activity may elect one of three remedies listed below:

1. An appeal to the Merit Systems Protection Board (MSPB) if the covered personnel action is appealable to the Board;
2. A negotiated grievance if the individual is in the bargaining unit; or
3. A complaint filed with the OSC for investigation, if the covered personnel action is not appealable to the Board. An employee may file an individual appeal with the MSPB after the OSC completes the investigation.

An individual's election is made when an individual files one of the three actions listed above.

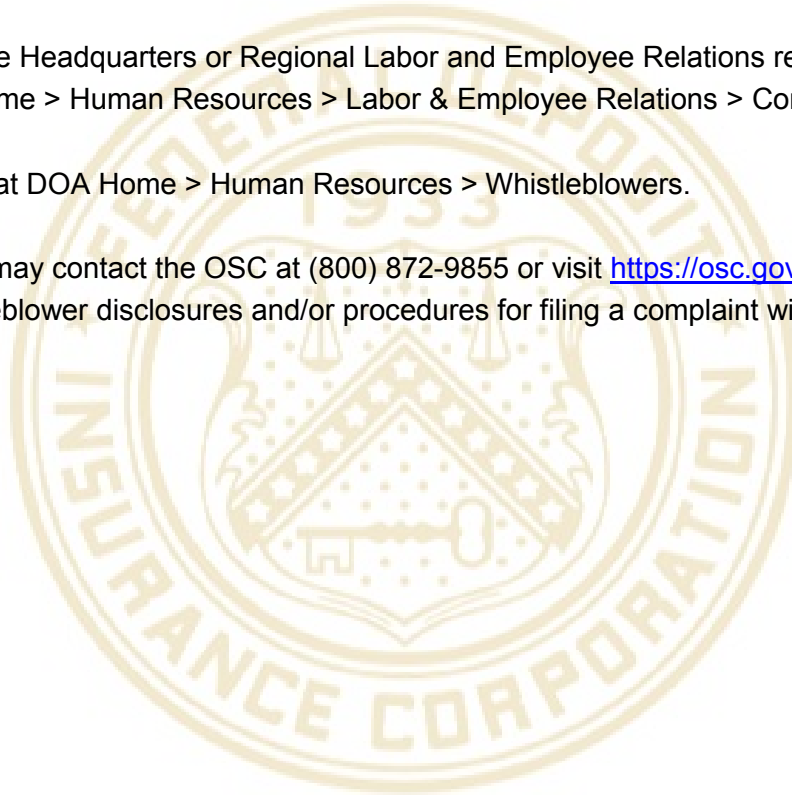


Appendix – Additional Information

Questions regarding Whistleblower Protection Rights or filing procedures should be directed to the:

1. Whistleblower Protection Coordinator in the OIG, at OIG Hotline
attn.: Whistleblower Protection Coordinator
1-800-964-FDIC
ighotline@fdicoig.gov;
2. Applicable Headquarters or Regional Labor and Employee Relations representative
(DOA Home > Human Resources > Labor & Employee Relations > Contacts); or
3. FDICnet at DOA Home > Human Resources > Whistleblowers.

Individuals also may contact the OSC at (800) 872-9855 or visit <https://osc.gov> for information regarding whistleblower disclosures and/or procedures for filing a complaint with the OSC.



Glossary of Terms

Term	Definition
Office of Special Counsel (OSC)	An independent investigative and prosecutorial agency within the Executive Branch that receives and investigates complaints alleging prohibited personnel practices, including those involving reprisal for whistleblowing.
Whistleblowing	When a Federal employee or applicant for employment discloses information which the individual reasonably believes evidences: <ul style="list-style-type: none">▪ A violation of law, rule, or regulation;▪ Gross mismanagement;▪ A gross waste of funds;▪ An abuse of authority; or▪ A substantial and specific danger to public health or safety.

Glossary of Acronyms

Acronym	Definition
DOA	Division of Administration
IG	Inspector General
LERS	Labor and Employee Relations Section
MSPB	Merit Systems Protection Board
OIG	Office of Inspector General
OSC	Office of Special Counsel



APPENDIX C-4

CIRCULAR 2750.1 – Disciplinary and Adverse Actions



FEDERAL DEPOSIT INSURANCE CORPORATION
DIRECTIVE SYSTEM

TYPE AND NUMBER

Circular 2750.1

CONTACT

Mary Laverty

TELEPHONE NUMBER

(703) 562-2171

DATE

January 22, 1999

DATE OF CANCELLATION (*Bulletins Only*)

TO: All Employees

FROM: John W. Lynn, Acting Director
Division of Administration (DOA)

SUBJECT: Disciplinary and Adverse Actions

1. Purpose. To establish policy and issue information and guidance on disciplinary and adverse actions, to include performance based actions, and their use at the FDIC.

2. Scope. This circular applies to all FDIC employees, including both competitive service as well as excepted service employees, with the exception of presidential appointees and re-employed annuitants. The applicability of the provisions of this circular to bargaining unit employees has been negotiated with the National Treasury Employees Union (NTEU). Where the provisions of this circular differ from the terms of other negotiated agreements with NTEU, the terms of the NTEU negotiated agreements shall take precedence, provided they conform to Federal law. Therefore, any other negotiated agreements should be read in conjunction with this circular.

Note: The Office of Inspector General (OIG) is in the process of establishing a Personnel Services Office that will handle disciplinary and adverse actions involving OIG employees. Upon transfer of operational personnel authority to the OIG, actions involving OIG employees will be carried out in accordance with policies established by the OIG Human Resources Branch and OIG Counsel's office.

3. Authority. Primary sources providing the authority for, and guidance on disciplinary and adverse actions are contained in 5 U.S.C. Chapter 75 and 5 C.F.R. 752.

4. Action. All employees are encouraged to review this directive carefully and retain it for future reference.

5. Policy. It is the policy of the FDIC to foster a positive and effective relationship between management and employees through communication, and when necessary, administer disciplinary and adverse actions in a fair and consistent manner.

6. Definitions

a. Adverse Action. Suspensions from duty and pay for more than 14 calendar days, indefinite suspensions, reductions in grade, reductions in pay, removals, and furloughs of 30 days or less constitute adverse actions. An adverse action can be imposed for conduct or performance problems.

b. Appeal Rights. Employees generally have the right to appeal a personnel action taken against them to a third-party. Examples of such third parties include the Merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC). Further, NTEU may elect to make an appeal to a grievance arbitrator on behalf of a bargaining unit employee. However, employees serving in their probationary period or trial period have limited appeal rights, as discussed in paragraph 10., below. Additionally, excepted service employees, as defined in 5 C.F.R. 213, who are non-preference eligibles, do not obtain full rights of appeal until they have completed two years of service. Excepted service preference eligible employees must complete one year of service before obtaining full appeal rights. (For further information refer to 5 U.S.C. 7511.)

c. Day. The reference to a day for purposes of disciplinary and adverse actions means a calendar day. For computing periods of time, days are full calendar days and include weekends unless otherwise specified.

d. Deciding Official. The management official with delegated authority to render the decision on a proposed disciplinary or adverse action. The deciding official must not have been involved in any aspect of the penalty determination at the proposal stage, in order to be considered impartial, but may have general knowledge of the action taken by the proposing official.

e. Disciplinary Action. Letters of admonishment, letters of reprimand, and suspensions from duty and pay of 14 calendar days or less constitute disciplinary actions. Disciplinary action may only be taken as a result of conduct problems.

f. Douglas Factors. The twelve factors which the MSPB has determined are relevant in the deciding official's determination regarding the appropriateness of a penalty imposed against an employee. (See paragraph 9., below.)

g. Indefinite Suspension. Usually invoked against an employee who is the subject of a criminal investigation for which a period of incarceration may result. The criminal investigation may be related to on or off duty conduct. Additionally, indefinite suspension may also be invoked pending other agency investigation, inquiry, or agency action. This suspension is used to place the employee in a non-duty, non-pay status pending further investigation and/or resolution of the criminal charges against the employee.

h. Oral Reply. A verbal response by an employee, or his/her representative, to a notice of proposed disciplinary or adverse action. Oral replies are typically made to the deciding official in the action. The purpose of the oral reply is to give the employee an opportunity to make an oral plea in an attempt to sway the decision in his/her favor. The oral reply is not a hearing and the testimony of witnesses is not permitted.

i. Performance Improvement Plan (PIP). A written notice to an employee outlining performance deficiencies. The PIP is issued when counseling has not resulted in an improvement in performance, and can be issued at any point during the year. The PIP provides a formal plan of expectations for improvement of performance. In addition, a PIP is required to be issued when an employee has received an overall summary rating of Unacceptable, or has received two consecutive Marginal ratings.

j. Proposing Official. The management official with delegated authority to issue the notice to an employee that a disciplinary or adverse action is proposed against him/her. The proposing official is generally the management official with some degree of direct knowledge regarding the misconduct or performance deficiencies.

k. Written Reply. A written response by an employee or his/her representative to a notice of proposed disciplinary or adverse action. The written reply may include affidavits and other documentary evidence in support of the employee's argument.

7. Responsibilities

a. The Personnel Services Branch (PSB) is responsible for interpreting and providing guidance to managers and supervisors on discipline and adverse actions and the policies and procedures contained in this directive. Additionally, PSB is responsible for informing affected employees of their rights and entitlements. In accordance with the delegations of authority, PSB will provide concurrence on behalf of DOA for all disciplinary and adverse actions. PSB will obtain concurrence from the General Counsel and, when appropriate, the Ethics Counselor.

b. Managers and supervisors are responsible for documenting the facts and circumstances warranting consideration of a disciplinary or adverse action, and for consulting their servicing PSB to obtain advice and assistance before initiating a disciplinary or adverse action. After obtaining guidance and advice, it is the managers' and supervisors' responsibility to follow through in a timely manner with corrective steps if improvement in the employee's conduct or performance does not occur. As circumstances warrant, managers and supervisors are responsible for referring employees to the Employee Assistance Program (EAP).

8. Procedures

a. Informal Actions. Once the supervisor has identified a problem relating to the employee's conduct or performance, the supervisor must inform the employee of the existence of the problem and state his/her expectations for improvement. This can be achieved by oral counseling, written counseling, a letter of warning, or a combination of oral and written communications. The distinction between a letter of counseling and a letter of warning is that the warning includes a notice that disciplinary action will be taken if the employee fails to correct the noted deficiencies.

b. Disciplinary Actions. Disciplinary actions imposed are expected to be corrective in nature and consistent with penalties imposed for similar infractions. All disciplinary actions require concurrence by the Director, Division of Administration and the General Counsel, or their designees, prior to issuance to an employee. Additionally, concurrence by the Ethics Counselor, or his/her designee, shall be obtained, as appropriate. The employee will be asked to sign a statement, acknowledging receipt of any written notice and the date of receipt. The following describes the various types of disciplinary actions:

(1) Letter of Admonishment: A letter of admonishment is issued by the management official with delegated authority, as a result of employee misconduct. This is the least severe formal disciplinary action. A letter of admonishment is usually issued when prior informal efforts have not corrected the misconduct, or when the misconduct is considered sufficiently serious to warrant issuance without prior warning. The letter of admonishment shall be placed in the employee's Official Personnel Folder (OPF) for a period of one year, or as dictated by the applicable NTEU agreement. The employee has a right to make a written reply to the letter of admonishment, subsequent to its issuance. The employee's written reply will be attached to the letter of admonishment when it is filed in the OPF. The letter of admonishment is grievable.

(2) Letter of Reprimand: A letter of reprimand is issued by the management official with delegated authority, as a result of employee misconduct. A letter of reprimand is usually issued when prior informal efforts have not corrected the misconduct, or when the misconduct is considered sufficiently serious to warrant issuance without prior warning. The letter of reprimand is placed into the employee's OPF for a period of two years, or as dictated by the applicable NTEU agreement. The employee has a right to make a written reply to the letter of reprimand, subsequent to its issuance. The employee's written reply will be attached to the letter of reprimand when it is filed in the OPF. The letter of reprimand is grievable.

(3) Suspension of 14 Calendar Days or Less: A suspension is proposed by the management official with delegated authority, as a

result of employee misconduct, and decided by a management official at a higher level than the proposing official. The employee is entitled to an advance notice period before a suspension can be effected against him/her. The employee will be provided with a written proposal and has a right to review the material relied upon by management in proposing the suspension. The employee also has a right to reply orally and/or in writing to the proposal before a decision is made regarding the suspension, and a right to representation.

Upon request to and approval from their immediate supervisor, employees will be granted a reasonable amount of official time to prepare and present their replies. An oral reply is generally made to the deciding official. The deciding official may request clarification from the proposing official regarding the notice of proposal or the material relied upon. However, the proposing official may not provide the deciding official with any new adverse information. A suspension will result in a loss of pay for scheduled workdays, and become a permanent documented part of the employee's OPF. A suspension of 14 calendar days or less is grievable.

c. Adverse Actions. Adverse actions imposed are expected to be reasonable with regard to penalty and consistent with penalties imposed for similar infractions. All adverse actions require concurrence by the Director, Division of Administration and the General Counsel, or their designees, prior to issuance to an employee. Additionally, concurrence by the Ethics Counselor, or

his/her designee, shall be obtained, as appropriate. The employee will be asked to sign a statement acknowledging receipt of any written notice and the date of receipt.

All adverse actions (suspension for more than 14 calendar days, indefinite suspension, reduction in grade or pay, and removal) utilize the following procedures:

(1) The adverse action is proposed by the management official with delegated authority, and normally decided by a management official at a higher level than the official who issued the proposal. The employee is entitled to thirty (30) days advance written notice of the proposed adverse action. Note, however, that the 30-day advance notice period may be shortened when there is reasonable cause to believe that an employee has committed a crime where imprisonment may be imposed.

(2) The advance written notice shall inform the employee of the specific reasons for the proposal, their right to representation, and their right to reply to the proposal orally and/or in writing. The employee has a right to review the material relied upon in proposing the adverse action. Upon request to and approval from their immediate supervisor, employees will be granted a reasonable amount of official time to prepare and present their replies. An oral reply is typically made to the deciding official. A written reply will be submitted to the individual specified in the proposal.

(3) The deciding official may request clarification from the proposing official regarding the notice of proposal or the material relied upon. However, the proposing official may not provide the deciding official with any new information. The decision must be based upon a preponderance of the evidence provided to the deciding official and must be for such cause as will promote the efficiency of the Federal service. If any of the charges cited in the proposal notice are not sustained by the preponderance of the evidence, those charges may not be relied upon in effecting the action. The deciding official must then determine which charges are sustained, and whether the sustained charges warrant the action proposed. The deciding official must consider the Douglas Factors in rendering the decision on the penalty proposed. The deciding official has the authority to reduce any proposed penalty, but may not impose a more severe action than that proposed.

(4) The written decision must contain the employee's right to appeal the decision to the MSPB or to file a complaint of discrimination, along with the appeal time frames, the MSPB address, appeal form, and regulations. If the employee is in a bargaining unit position covered by a negotiated grievance procedure covering adverse actions, the decision notice will also advise of his/her option to file a grievance.

d. Performance Based Actions

When an employee's performance is less than satisfactory, management will initiate action to assist the employee with improving his/her performance. This may include counseling orally and/or in writing. Continued deficient performance may necessitate more formal actions. However, prior to initiating an adverse action based on unsatisfactory performance, the employee will be provided with a performance improvement plan (PIP) and a reasonable opportunity to raise his/her performance to a satisfactory level before any action to remove him/her from his/her current position is proposed. The PIP will clearly state the specific performance deficiencies and the supervisor's expectations for improvement. The plan establishes a period for improvement, generally 90 days. The supervisor must also offer meaningful assistance to the employee during the improvement period, which may include closer supervision and/or providing appropriate training. The supervisor should closely monitor the employee's work and must provide written feedback regarding the employee's performance at specified intervals during the performance improvement period.

At the end of the performance improvement period, the supervisor will prepare a written summary of the employee's performance in the identified areas. If the performance has improved, the employee will be advised that should his/her performance fall below the satisfactory level within one year from the start of the PIP, action will be taken to remove the employee from his/her current position without providing another performance improvement opportunity. If the performance has not improved, the supervisor should take appropriate action, such as reassignment, demotion, or removal from Federal service, to remove the employee from his/her current position.

The procedures described in subparagraph 8.c., above, shall be followed for performance based actions once a determination has been made that an adverse action is warranted.

9. Penalty Determination. The MSPB has established mitigating and aggravating factors, referred to as Douglas Factors, that must be considered in reaching a decision on a penalty in an adverse action. Not all of the following factors will apply in every case, but all of the relevant factors in any given situation should be considered. The deciding official's analysis of these factors will be incorporated into the adverse action decision letter. The 12 Douglas Factors are as follows:

a. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

b. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and

prominence of the position.

c. The employee's past disciplinary record.

d. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

e. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties.

f. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.

g. Consistency of penalties with applicable table of penalties.

Note: There is no FDIC table of penalties.

h. The notoriety of the offense or its impact upon the reputation of the agency.

i. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

j. Potential for the employee's rehabilitation.

k. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.

1. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

10. Probationary/Trial Period Employees. The one-year probationary or trial period imposed upon new employees serves as a means to review the employees' conduct and performance so that an informed decision can be made regarding their ability to meet expectations. When an employee does not demonstrate acceptable conduct or performance during this period, action should be taken to discharge the employee from the Federal service. In cases where problems have been identified, it is incumbent upon the supervisor to take corrective action well in advance of the expiration of the probationary or trial period. This action will afford the employee sufficient time to correct the problem before management is required to make the decision regarding completion of the period. In most cases, the supervisor should start by orally counseling the employee when problems are discovered. If the counseling fails to bring the necessary improvement, a letter of warning should be issued, notifying the employee that failure to meet expectations will result in discharge from the Federal service.

Failure to improve will necessitate the issuance of a written notice of discharge, outlining the basis for the termination, the effective date, and the employee's rights of appeal. It is key to note that discharge from a probationary or trial period must be effected before expiration of the one year period, (i.e., before the end of the employee's scheduled tour of duty the day before the anniversary date of the employee's appointment). If the discharge has not been effected against the employee prior to the probationary or trial period expiration date, disciplinary and adverse action procedures must be followed. Thus, early identification and correction of problems are crucial.

Probationary or trial period employees in the competitive service have limited appeal rights. An appeal regarding their discharge from Federal service may be filed with the MSPB only if that action was taken on the basis of the employee's marital status or partisan political affiliation. However, if the basis for the termination, in whole or in part, relates to conditions arising prior to employment, the employee may file an MSPB appeal on the grounds that the termination was not effected in accordance with the proper procedural requirements. Further, allegations of discriminatory termination may be filed only if the employee first has the basis to file an appeal due to his/her marital status or partisan political affiliation.

Excepted service, non-preference eligible, employees who are discharged during their trial period do not have the right to appeal to the MSPB.

11. Employee Assistance Program. FDIC Circular 2821.1, FDIC's Employee Assistance Program, was established to assist employees with personal problems that may affect conduct or performance on the job.

The program includes the availability of counseling services. Regardless of the nature of the employee's conduct or performance problem, managers have the obligation to refer the employee to the Employee Assistance Program. The referral should be included in written counseling memoranda, letters of warning, or other appropriate written notices regarding conduct or performance deficiencies.

12. Questions. Any questions concerning the disciplinary and adverse actions process should be directed to the Division of Administration, Personnel Services Branch.

13. Effective Date. This circular is effective immediately.