



# FDIC DIRECTIVE 2400.02

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## Whistleblower Protection Rights

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**Approval Authority:** Arleas Upton Kea, Deputy to the Chairman and Chief Operating Officer

**Originating Division/Office:** Chief Operating Officer Organization

**Approval Date:** 07/16/2019

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### PURPOSE

This Directive has been revised 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, Public Law 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)
- [Nationwide Agreement between the Federal Deposit Insurance Corporation & National Treasury Employees Union](#)
- The Whistleblower Protection Act and the Whistleblower Protection Enhancement Act (5 U.S.C. 2302(b)(8)-(9))

### FORMS

None.

### SUMMARY OF CHANGES

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

**REVISION, dated July 16, 2019**

This Directive had been revised to conform to the standard template and reflect updates by federal law.

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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, Public Law 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](mailto: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**

*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:

- 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**

*DOA*: Division of Administration

*IG*: Inspector General

*LEERS*: Labor and Employee Relations Section

*MSPB*: Merit Systems Protection Board

*OIG*: Office of Inspector General

*OSC*: Office of Special Counsel