

No FEAR Act

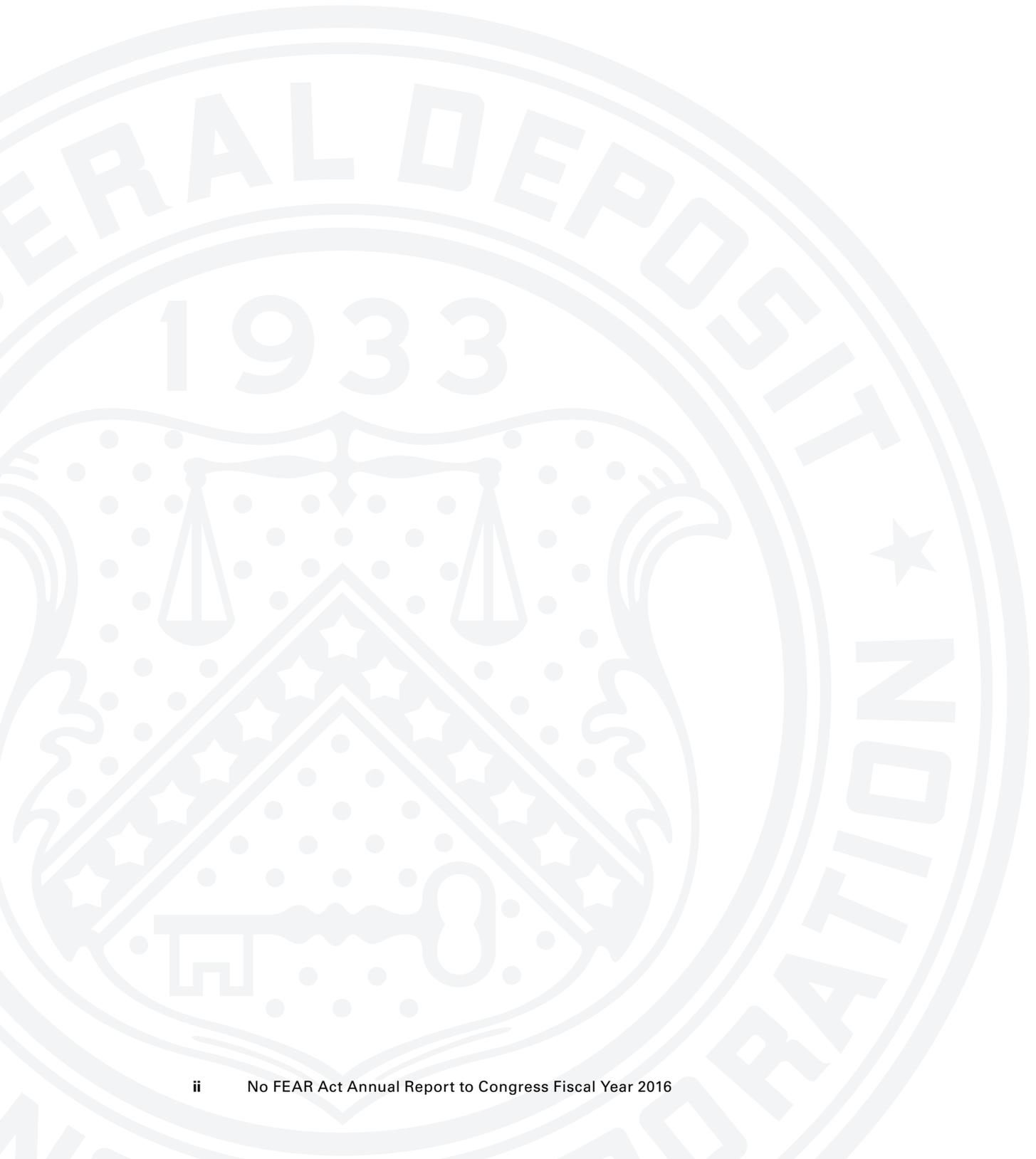
ANNUAL REPORT TO CONGRESS

Federal Deposit Insurance Corporation



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Introduction

The mission of the Federal Deposit Insurance Corporation (FDIC) is to maintain stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large complex financial institutions resolvable, and managing receiverships. To achieve its mission, the FDIC believes that its employees are its most valued asset and is committed to ensuring that its workplace is free from discrimination, harassment and retaliation.

The FDIC is pleased to present its Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) Annual Report to Congress for Fiscal Year 2016. This report provides information about administrative complaints of employment discrimination and retaliation and cases filed and pending in the Federal courts. It also includes the FDIC's annual EEO Policy Statement, information on actions taken and planned to improve the FDIC's EEO Complaint program, the training of its employees on No FEAR Act requirements, and copies of current FDIC policies relating to discrimination, anti-harassment, whistleblower protection rights, and disciplinary and adverse action.

Purpose of Report

The No FEAR Act (Pub. L. No. 107-174) requires Federal agencies to be accountable for violations of antidiscrimination and whistleblower protection laws. The Act requires the FDIC to submit an annual report within 180 days of the end of the fiscal year to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the FDIC, the U.S. Equal Employment Opportunity Commission (EEOC), and the Attorney General. The U.S. Office of Personnel Management (OPM) regulations also require the submission of this report to the Director of OPM.

Specifically, the No FEAR Act Annual Report must provide the following information:

- The number, status, and disposition of Federal court cases 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 of employees disciplined for discrimination, retaliation, or harassment, and the FDIC policies relating to appropriate disciplinary action;
- Final year-end summary data related to FDIC EEO complaint activity for the fiscal year;
- An analysis of trends, causation, and practical knowledge gained through experience;
- Actions planned or taken to improve FDIC EEO complaint program; and,
- The FDIC No FEAR Act Training Plan.

This report is based on Fiscal Year (FY) 2016 data (October 1, 2015 - September 30, 2016).

No FEAR Act Legal Coverage

The FDIC presents the following information to meet the reporting requirements of the No FEAR Act and its implementing regulations.

The laws covered by 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, and national origin);
- The Age Discrimination in Employment Act of 1967, *as amended*, 29 U.S.C. § 633a (age);
- The Equal Pay Act of 1963, 29 U.S.C. § 206(d) (gender-based wage differentials);
- Section 501 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 791 (disability);
- The Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233 (genetic information); and,
- Prohibited Personnel Practices, 5 U.S.C. §§ 2302(b) and (d) (race, color, religion, sex, national origin, age, disability, marital status, political affiliation, and whistleblowing).

No FEAR Act Data and Analysis

EEO Complaint Activity in Federal Court and Disposition

At the start of FY 2016, there were six cases pending in federal district courts and one case in an appellate court. Seven new cases were filed in district court and three new appeals were filed in appellate court during FY 2016. These 10 cases raised allegations of discrimination under Title VII, the Age Discrimination in Employment Act, and the Rehabilitation Act. Of the 13 cases pending at any time in FY 2016 in district court, one case was voluntarily withdrawn, one case was settled, and four cases were decided in favor of the agency. Two cases were affirmed at the appellate level in favor of the agency. Of the nine remaining cases pending at the end of FY 2016, seven are pending in district court and two are pending in appellate court.

Judgment Fund Reimbursements and Budget Adjustment

The Judgment Fund was established to pay court judgments and Justice Department compromise settlements of actual or imminent lawsuits against the government. It is a permanent, indefinite appropriation, administered by the U.S. Department of the Treasury and is available to pay judicially and administratively ordered monetary awards against the United States. The No FEAR Act requires Federal agencies to reimburse the Judgment Fund for personnel discrimination payments made.

The FDIC is an independent agency and is not appropriated by Congress, with the exception of the FDIC, Office of Inspector General (OIG). There were no judgments against the FDIC, including the OIG, from cases pending or resolved in federal district court in FY 2016. Therefore, no budget adjustments were necessary.

Number of Employees Disciplined and Discipline Policy

During FY 2016, the FDIC did not discipline any employees for discrimination, retaliation, harassment, or any violation of the law covered by the No FEAR Act. Additionally there no findings of discrimination issued by a Final Agency Decision, the EEOC, the Merit Systems Protection Board, the Office of Special Counsel, a federal court, or after a management inquiry.

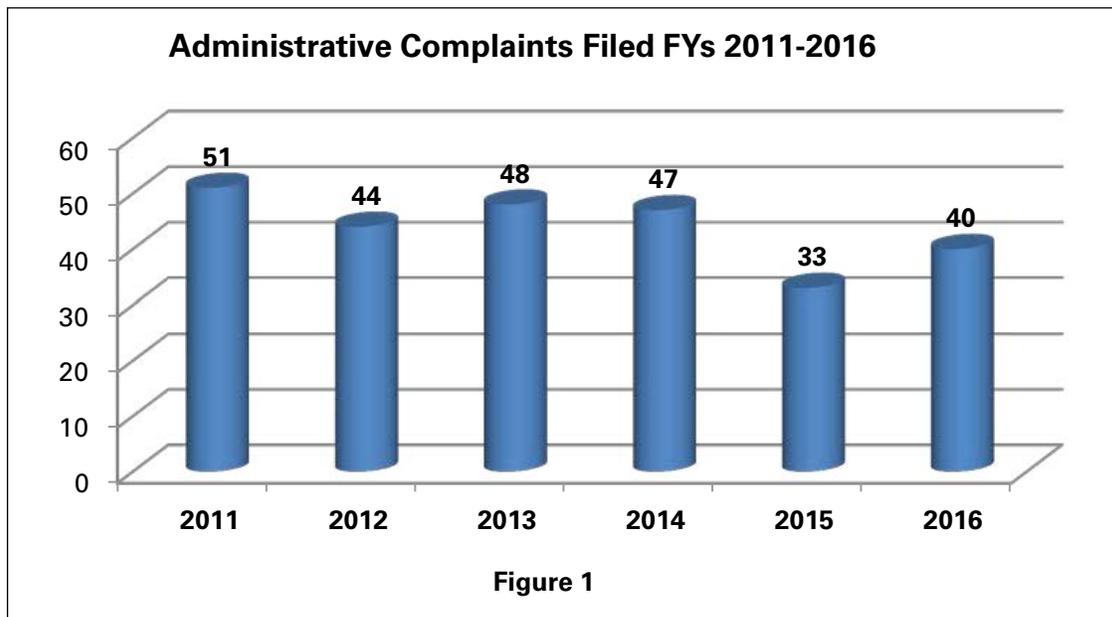
The FDIC has a zero tolerance policy for acts of discrimination, harassment or retaliation as stated in the FDIC's Annual EEO Policy Statement (Appendix A). Training is provided to managers and supervisors on the prohibition against discrimination and retaliation in its mandatory training "EEO and Diversity for Managers and Supervisors" that is delivered bi-annually. Additionally, the FDIC has a Disciplinary and Adverse Action policy that fosters positive and effective relationships between managers and employees through open and direct communication and, when necessary, to administer disciplinary and adverse actions in a fair and consistent manner.

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

Trends of Administrative EEO Complaint Activity

Complaint activity can be measured by the number of discriminatory bases and issues alleged in complaints. Further, a single complaint can contain multiple bases and issues, therefore, the metrics contained in this analysis may overlap.

During FY 2016, there was an increase in the number of administrative EEO complaints filed against the FDIC: 33 in FY 2015 and 40 in FY 2016. This represented a 21 percent increase from FY 2015. (Figure 1)



Of the 40 EEO complaints filed in FY 2016, the top bases were: age at 24 (60 percent); race at 22 (55 percent); sex at 20 (50 percent); and reprisal at 16 (40 percent).

There was a decrease in complaints based on disability from 15 in FY 2015 to 11 in FY 2016 and a decrease in complaints based on reprisal from 18 in FY 2015 to 16 in FY 2016. The number of complaints based on age increased from 12 in FY 2015 to 24 in FY 2016 and complaints based on religion increased from one in FY 2015 to three in FY 2016.

In FY 2016, there were 13 complaints alleging workplace harassment. This was a 62 percent increase from FY 2015 (eight complaints). Prior to FY 2016, there had been a decrease in complaints alleging workplace harassment: from a high of 31 in FY 2013 to eight in FY 2015. There was also an increase in FY 2016 in complaints alleging: promotion/non-selection (11 in FY 2016 compared to seven in FY 2015); disciplinary actions (eight in FY 2016 compared to seven in FY 2015); and, appointment/hire (eight in FY 2016, compared to four in FY 2015).

Additionally, in 85 percent of the harassment complaints (11 complaints), there were also issues regarding disciplinary actions and/or performance evaluation/appraisals.

The FDIC's Anti-Harassment Program allows for harassment claims to be reviewed and resolved expeditiously by the Office of Minority Women Inclusion (OMWI), the Labor and Employee Relations Section of the Division of Administration, and the Legal Division. In FY 2016, there were nine inquiries involving allegations of harassment raised through the Anti-Harassment Program. Four inquiries were found to be unsubstantiated; one inquiry was withdrawn; one inquiry was discontinued by the employee; and, three inquiries resulted in one employee being counseled, one employee given a letter of warning for bullying and hostile behavior, and additional training being conducted at a Field Office.

Causal Analysis

The FDIC believes the increase in the number of EEO complaints may be attributed to applicants for permanent employment, as well as an increase in training provided to employees regarding their EEO rights and responsibilities.

During FY 2016, the number of complaints filed increased from 33 in FY 2015 to 40 in FY 2016. In these new filings, eight (20 percent) were filed by job applicants and non-permanent employees (mostly alleging age discrimination) seeking permanent or continued employment with the FDIC. Since 2014, the FDIC has been decreasing its non-permanent workforce, through attrition, due to of the declining need to maintain the number of non-permanent staff who were hired to support FDIC mission responsibilities during the financial crisis. As the financial crisis abated and fewer banks failed, non-permanent staff's appointments were allowed to expire at the end of their appointment terms. Simultaneously, opportunities for permanent employment and external hiring in these important areas were limited, thereby making the hiring process very competitive.

Additionally, in 2016, the FDIC administered its updated EEO training for managers and supervisors and its revised No FEAR Act training, conducted webinars for managers, supervisors and employees on the anti-harassment policy and on its EEO complaint processes, updated and distributed its Whistleblower policy and administered a mandatory online Whistleblower training for all employees. Managers, supervisors and employees were trained on what constitutes workplace harassment and whistleblower activities and notified of their rights and responsibilities under the relevant laws.

Practical Knowledge Gained through Experience

It is anticipated that the FDIC's non-permanent workforce will continue to decrease and that its permanent workforce will stabilize. Thus, there will be fewer opportunities for external hiring. However, the FDIC continues to provide career counseling assistance to its non-permanent workforce whose temporary appointments will be expiring. The career counseling assistance includes resume writing, interview skills, the Federal application process and USAJobs, and other assistance in locating employment.

It is also clear that, as employees understand their rights and responsibilities under the Equal Employment Opportunity and Whistleblower Protection Laws, the potential for exercising those rights increases. At the same time, managers and supervisors have become more aware of their responsibilities to ensure workplace practices and the work environment are free from discrimination, harassment and retaliation. Continued training will be provided so that all employees may recognize behaviors and actions that may be perceived as discriminatory or retaliatory and to encourage prevention and early resolution.

Actions Planned/Taken to Improve FDIC EEO Complaint Program

The FDIC has a longstanding commitment to prohibiting discrimination and harassment in its workplace and in all of its programs and activities. To support this commitment, the FDIC makes continuous efforts to improve its programs, policies, and procedures and to adhere to the laws and regulations that protect the rights of its employees.

Actions Taken During FY 2016

The FDIC implemented the following initiatives in 2016:

- Reviewed internal practices and procedures to improve complaints processing, and implemented the quality control recommendations resulting from the third party review conducted in 2015, including:
 - Revising the standard operating procedures for processing complaints
 - Improving the management of the complaints processing data base system
 - Increasing oversight of the complaints process to improve processing time;
- Revised and publicized the FDIC's Equal Opportunity Policy, Discrimination Complaint Procedures and the Anti-Harassment Policy;
- Revised and distributed the 2016 Chairman's EEO Policy Statement to all employees;
- Developed frequently asked questions and answers regarding the FDIC's policies on use of official time in the EEO process and on religious accommodation;
- Drafted guidance on the EEO Alternative Dispute Resolution policy;
- Updated the No FEAR Act computer-based training and administered the training to all employees; and, conducted webinar trainings on the EEO complaints process, reprisal and the Anti-Harassment Program policy to managers and employees.

Planned Actions to Improve the FDIC EEO Complaint Program

- Update the OMWI website, EEO posters and other complaint documents to ensure compliance with regulatory requirements and provide employees with their rights and responsibilities;
- Finalize the EEO Alternative Dispute Resolution policy;
- Review internal practices and procedures to identify opportunities to improve complaints processing and quality control;
- Review and update, as needed, the EEO and Diversity training for managers and supervisors;
- Review and update, as needed, the No FEAR Act computer-based training;
- Conduct webinars on retaliation for managers and supervisors, and employees.

FDIC No FEAR Act Training Plan

The FDIC adheres to the requirements of the No FEAR Act to provide biennial training for all employees. A global message is issued to all employees announcing the beginning of the biennial training cycle. The training cycle for this reporting period is 2016 – 2017. Annually, the FDIC issues its No FEAR Act Notice to all employees to inform them of the available rights and protections under Federal anti-discrimination and whistleblower protection laws.

The FDIC No FEAR Act training was updated in FY 2016 to further clarify and expound on the recent changes to the EEOC case law. The training includes discussions on the Federal anti-discrimination laws, anti-retaliation laws, Executive Orders, whistleblower protection laws, and the FDIC mediation program. The training modules are compliant with the Rehabilitation Act, Section 508 (i.e., open captioned), and incorporates various techniques to reach different learning styles, including multimedia. The FDIC's No FEAR Act training is administered through FDICLearn, the learning management system implemented and maintained by FDIC's Corporate University. The FDIC tracks the number of employees completing the training and issues notification to those who have not completed it within the training cycle. As of February 2017, 5091 employees (86 percent) had completed the training for the current training cycle (FY2016-2017). The Office of Minority and Women Inclusion monitors the completion status by receiving monthly reports noting the number of employees who have completed the training.

New FDIC employees are advised during the New Employee Orientation Program of the requirement to complete the No FEAR Act Training within 90 days after their start date.

In addition to the No FEAR Act training, FDIC managers and supervisors are required to complete a mandatory EEO and Diversity classroom training biennially, which is designed to promote the prevention and elimination of discriminatory practices in the workplace.



APPENDIX A

FDIC ANNUAL EEO POLICY STATEMENT



February 21, 2016

MEMORANDUM FOR ALL FDIC EMPLOYEES

From: Martin J. Gruenberg
Chairman

Subject: Equal Employment Opportunity Policy Statement

I am pleased to once again reaffirm the FDIC's commitment to the principles of equal employment opportunity. It is the FDIC's policy to provide every individual with an equal opportunity in all of our employment programs and business activities, and to prohibit discrimination in all aspects of our personnel operations (including recruitment, hiring, promotions, training, awards, reorganizations and employee retention).

I expect every FDIC employee-staff and supervisors to continue our steadfast efforts to strengthen and sustain the FDIC's position as a model workplace and employer of choice. It is essential that we continue to cultivate a workplace culture of excellence that is inclusive and supportive of diversity, and safe and free from hostility or harassment. Such a workplace treats everyone with dignity and respect, embraces our differences, and allows the freedom to compete on a fair and level playing field.

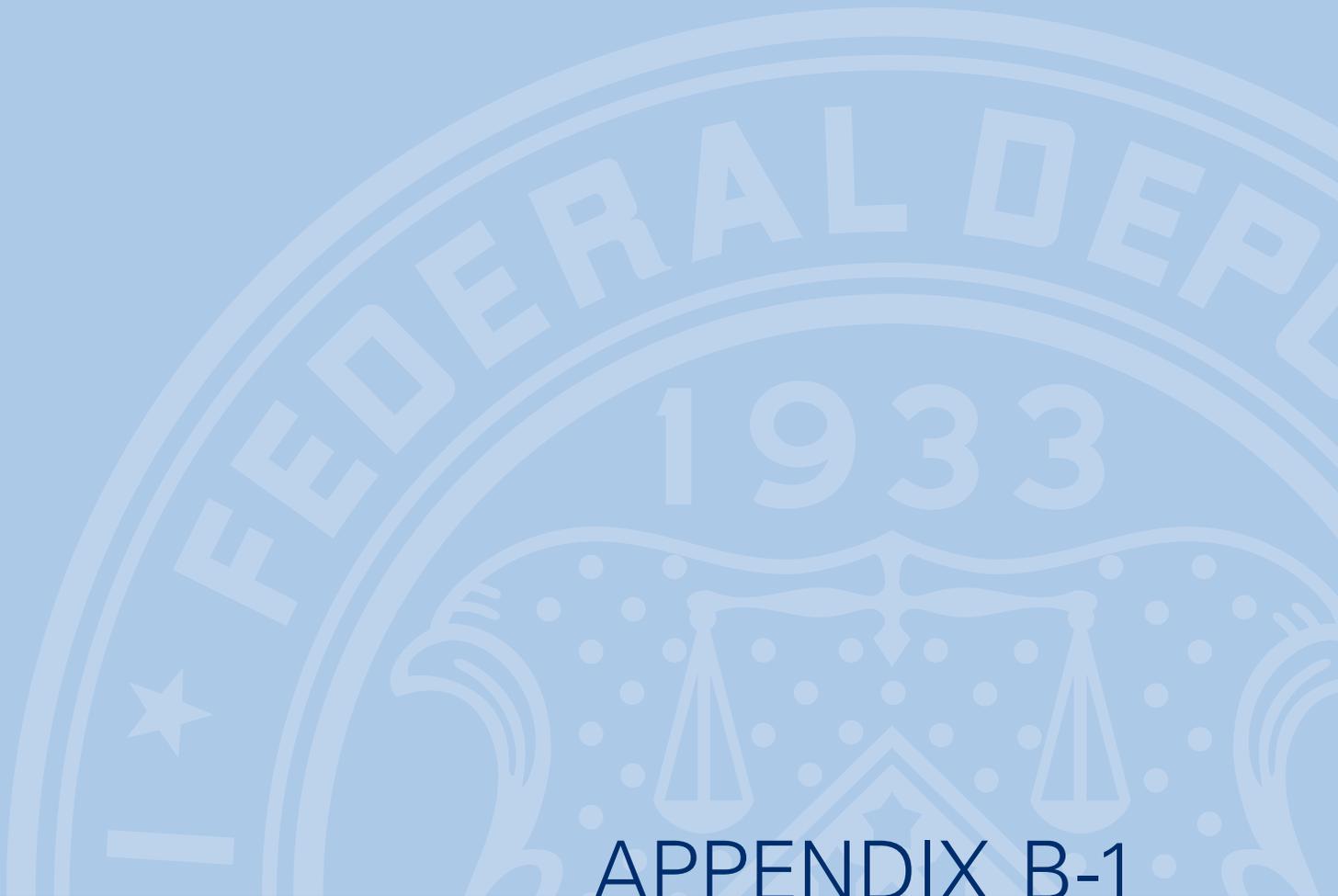
I am confident that all of you will become familiar with and adhere to the EEO principles and affirm our zero tolerance for prohibited, discriminatory behavior. We must continue to conduct ourselves with professional courtesy and advance the principles of workplace access and inclusion.

For more information and equal employment opportunity and freedom from reprisal for those who engage in protected activity, please take the time to review the FDIC's updated Equal Opportunity Policy (Circular 2710.1 dated November 20, 2015) at <https://fdicnet.fdic.gov/content/dam/DOA/documents/rimldirectives/2000/2710-1.pdf>.



APPENDIX B

FDIC SUMMARY COMPLAINT DATA



APPENDIX B-1

Federal Court Data

Appendix B-1: Summary Complaint Data-Federal Court Data

FEDERAL CASES PENDING in FY 2016

Cases pending at any time during the year, including those filed during the year, and those disposed of during the year

| | |
|-----------------------------------|----|
| Pending District Court Cases | 13 |
| Pending Appellate Court Cases | 2 |
| New Cases Filed in District Court | 7 |

| | ALLEGING A VIOLATION OF | | | | | | | | | |
|--|-------------------------|--------------|----------|-------|--------|-------|-------------------------------|--------------|--------------|--|
| | Antidiscrimination Laws | | | | | | Whistleblower Protection Laws | | | |
| | 5 USC | | 29 USC | | | | 42 USC | | 5 USC | |
| | § 2302(b)(1) | § 2302(b)(9) | § 206(d) | § 631 | § 633a | § 791 | § 2000e-16 | § 2302(b)(8) | § 2302(b)(9) | |
| 1. Pending Cases | | | | | | | | | | |
| Disposed of during FY016 | 0 | 0 | 0 | 0 | 2 | 0 | 5 | 0 | 0 | |
| Still pending at end of FY2016 | 0 | 0 | 0 | 0 | 4 | 1 | 5 | 0 | 0 | |
| 2. Disposition of Cases (including dismissals) | | | | | | | | | | |
| Settlements | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | |
| Withdrawals | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | |
| Final Judgment for Complainant | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Final Judgment for Agency | 0 | 0 | 0 | 0 | 1 | 0 | 4 | 0 | 0 | |
| Reimbursement to Judgment Fund | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Remand of appellate cases to District Court | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Reimbursement to Judgment Fund For Attorney's Fees (where separately designated) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| 3. Number of Employees Disciplined In Connection With Federal Court Litigation For Violating Antidiscrimination and Whistleblower Protection Laws | | | | | | | | | | |
| Reprimand | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Suspension without pay | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Reduction in grade or pay | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Removal | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| 4. Aggregate Number of Employees Disciplined In Accordance With FDIC Policies for Conduct That Is Inconsistent With Federal Anti-discrimination Laws And Whistleblower Protection Laws Whether Or Not In Connection With Federal Court Litigation | | | | | | | | | | |
| Reprimand | 0 | | | | | | | | | |
| Suspension without pay | 0 | | | | | | | | | |
| Reduction in grade or pay | 0 | | | | | | | | | |
| Removal | 0 | | | | | | | | | |



APPENDIX B-2

EEO Data Posted Pursuant to the No FEAR Act

Appendix B-2: Summary Complaint Data - Equal Employment Opportunity Data Posted

Pursuant to the No FEAR Act

Data as of 09-30-2016

| Complaint Activity | 2012 | 2013 | 2014 | 2015 | 2016 |
|--|-------------|-------------|-------------|-------------|-------------|
| Number of Complaints Filed | 44 | 48 | 47 | 33 | 40 |
| Number of Complainants | 37 | 43 | 40 | 29 | 34 |
| Repeat Filers | 2 | 2 | 6 | 4 | 4 |
| Complaints by Basis | | | | | |
| <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i> | 2012 | 2013 | 2014 | 2015 | 2016 |
| Race | 25 | 22 | 25 | 17 | 23 |
| Color | 10 | 12 | 8 | 6 | 11 |
| Religion | 0 | 1 | 1 | 1 | 3 |
| Reprisal | 30 | 35 | 29 | 18 | 18 |
| Sex | 17 | 20 | 27 | 15 | 20 |
| PDA | 0 | 0 | 0 | 0 | 1 |
| National Origin | 5 | 8 | 6 | 7 | 9 |
| Equal Pay Act | 0 | 0 | 1 | 0 | 0 |
| Age | 18 | 20 | 17 | 12 | 24 |
| Disability | 13 | 17 | 18 | 10 | 10 |
| Genetic Information | 0 | 0 | 1 | 1 | 0 |
| Non-EEO | 4 | 3 | 9 | 5 | 4 |
| Number of Complaints Alleging Each Type of Claim | | | | | |
| <i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.</i> | 2012 | 2013 | 2014 | 2015 | 2016 |
| Appointment/Hire | 12 | 2 | 7 | 4 | 8 |
| Assignment of Duties | 17 | 15 | 14 | 6 | 6 |
| Awards | 6 | 4 | 3 | 2 | 1 |
| Conversion to Full-time | 0 | 0 | 0 | 0 | 0 |
| Disciplinary Action | | | | | |
| Demotion | 1 | 1 | 0 | 0 | 0 |
| Reprimand | 4 | 4 | 1 | 0 | 0 |
| Removal | 3 | 4 | 5 | 0 | 0 |
| Suspension | 0 | 0 | 1 | 3 | 0 |
| Other | 12 | 9 | 4 | 4 | 8 |

| | | | | | |
|--|-------------|-------------|-------------|-------------|-------------|
| Duty Hours | 3 | 2 | 0 | 0 | 0 |
| Evaluation Appraisal | 17 | 21 | 16 | 9 | 8 |
| Examination Test | 1 | 2 | 1 | 1 | 1 |
| Harassment | | | | | |
| Non-Sexual | 25 | 29 | 14 | 8 | 13 |
| Sexual | 3 | 2 | 3 | 0 | 0 |
| Medical Examination | 1 | 2 | 0 | 0 | 0 |
| Pay (Including Overtime) | 5 | 5 | 4 | 3 | 2 |
| Promotion Non-Selection | 18 | 19 | 11 | 7 | 11 |
| Reassignment | | | | | |
| Denied | 6 | 7 | 2 | 4 | 1 |
| Directed | 0 | 5 | 1 | 1 | 1 |
| Reasonable Accommodation | 4 | 12 | 4 | 2 | 2 |
| Reinstatement | 1 | 0 | 0 | 0 | 0 |
| Religion Accommodation | | | | | 0 |
| Retirement | 0 | 1 | 0 | 0 | 0 |
| Sex Stereotyping | | | | | 0 |
| Telework | | | | | 0 |
| Termination | 2 | 7 | 9 | 4 | 2 |
| Terms/Conditions of Employment | 4 | 6 | 4 | 4 | 2 |
| Time and Attendance | 7 | 10 | 8 | 2 | 6 |
| Training | 9 | 9 | 5 | 1 | 2 |
| Other | 9 | 15 | 11 | 9 | 8 |
| Processing Time | | | | | |
| | 2012 | 2013 | 2014 | 2015 | 2016 |
| Complaints pending during fiscal year | | | | | |
| Average number of days in investigation | 224 | 220.64 | 220 | 178 | 179 |
| Average number of days in final action | 43 | 118.11 | 41 | 45 | 40 |
| Complaints pending during fiscal year where hearing was requested | | | | | |
| Average number of days in investigation | 223 | 233.40 | 219 | 190 | 193 |
| Average number of days in final action | 12 | 30.00 | 27 | 33 | 34 |
| Complaints pending during fiscal year where hearing was not requested | | | | | |

| | | | | | |
|--|-------------|-------------|-------------|-------------|-------------|
| Average number of days in investigation | 226 | 211.44 | 222 | 148 | 172 |
| Average number of days in final action | 48 | 143.29 | 70 | 48 | 45 |
| Complaints Dismissed by Agency | | | | | |
| | 2012 | 2013 | 2014 | 2015 | 2016 |
| Total Complaints Dismissed by Agency | 10 | 6 | 8 | 6 | 3 |
| Average Days pending prior to dismissal | 84 | 25 | 75 | 96 | 517 |
| Complaints Withdrawn by Complainants | | | | | |
| | 2012 | 2013 | 2014 | 2015 | 2016 |
| Total Withdrawn by Complainants | 2 | 4 | 2 | 2 | 3 |
| Total Final Actions Finding Discrimination | | | | | |
| | 2012 | 2013 | 2014 | 2015 | 2016 |
| Total Number of Findings | 0 | 0 | 0 | 1 | 0 |
| Without Hearing | 0 | 0 | 0 | 0 | 0 |
| With Hearing | 0 | 0 | 0 | 1 (100%) | 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> | | | | | |
| | 2012 | 2013 | 2014 | 2015 | 2016 |
| Total Number of Findings | 0 | 0 | 0 | 1 | 0 |
| Race | 0 | 0 | 0 | 0 | 0 |
| Color | 0 | 0 | 0 | 0 | 0 |
| Religion | 0 | 0 | 0 | 0 | 0 |
| Reprisal | 0 | 0 | 0 | 1 (100%) | 0 |
| Sex | 0 | 0 | 0 | 0 | 0 |
| National Origin | 0 | 0 | 0 | 0 | 0 |
| Equal Pay Act | 0 | 0 | 0 | 0 | 0 |
| Age | 0 | 0 | 0 | 0 | 0 |
| Disability | 0 | 0 | 0 | 0 | 0 |
| Genetic Information | 0 | 0 | 0 | 0 | 0 |
| Non-EEO | 0 | 0 | 0 | 0 | 0 |
| Findings After Hearing | | | | | |
| | 2012 | 2013 | 2014 | 2015 | 2016 |
| Total Number of Findings | 0 | 0 | 0 | 1 | 0 |
| Race | 0 | 0 | 0 | 0 | 0 |
| Color | 0 | 0 | 0 | 0 | 0 |

| | | | | | |
|---|-------------|-------------|-------------|-------------|-------------|
| Religion | 0 | 0 | 0 | 0 | 0 |
| Reprisal | 0 | 0 | 0 | 1 (100%) | 0 |
| Sex | 0 | 0 | 0 | 0 | 0 |
| National Origin | 0 | 0 | 0 | 0 | 0 |
| Equal Pay Act | 0 | 0 | 0 | 0 | 0 |
| Age | 0 | 0 | 0 | 0 | 0 |
| Disability | 0 | 0 | 0 | 0 | 0 |
| Genetic Information | 0 | 0 | 0 | 0 | 0 |
| Non-EEO | 0 | 0 | 0 | 0 | 0 |
| Findings Without Hearing | | | | | |
| Race | 0 | 0 | 0 | 0 | 0 |
| Color | 0 | 0 | 0 | 0 | 0 |
| Religion | 0 | 0 | 0 | 0 | 0 |
| Reprisal | 0 | 0 | 0 | 0 | 0 |
| Sex | 0 | 0 | 0 | 0 | 0 |
| National Origin | 0 | 0 | 0 | 0 | 0 |
| Equal Pay Act | 0 | 0 | 0 | 0 | 0 |
| Age | 0 | 0 | 0 | 0 | 0 |
| Disability | 0 | 0 | 0 | 0 | 0 |
| Genetic Information | 0 | 0 | 0 | 0 | 0 |
| Non-EEO | 0 | 0 | 0 | 0 | 0 |
| Findings of Discrimination Rendered by Issue | | | | | |
| | 2012 | 2013 | 2014 | 2015 | 2016 |
| Total Number of Findings | 0 | 0 | 0 | 1 (100%) | 0 |
| Appointment/Hire | 0 | 0 | 0 | 0 | 0 |
| Assignment of Duties | 0 | 0 | 0 | 0 | 0 |
| Awards | 0 | 0 | 0 | 0 | 0 |
| Conversion to Full-time | 0 | 0 | 0 | 0 | 0 |
| Disciplinary Action | | | | | |
| Demotion | 0 | 0 | 0 | 0 | 0 |
| Reprimand | 0 | 0 | 0 | 0 | 0 |
| Suspension | 0 | 0 | 0 | 0 | 0 |
| Removal | 0 | 0 | 0 | 0 | 0 |

| | | | | | |
|--------------------------------|---|---|---|-------------|---|
| Other | 0 | 0 | 0 | 1 (100%) | 0 |
| Duty Hours | 0 | 0 | 0 | 0 | 0 |
| Evaluation Appraisal | 0 | 0 | 0 | 0 | 0 |
| Examination Test | 0 | 0 | 0 | 0 | 0 |
| Harassment | | | | | |
| Non-Sexual | 0 | 0 | 0 | 0 | 0 |
| Sexual | 0 | 0 | 0 | 0 | 0 |
| Medical Examination | 0 | 0 | 0 | 0 | 0 |
| Pay Including Overtime | 0 | 0 | 0 | 0 | 0 |
| Promotion Non-Selection | 0 | 0 | 0 | 0 | 0 |
| Reassignment | | | | | |
| Denied | 0 | 0 | 0 | 0 | 0 |
| Directed | 0 | 0 | 0 | 0 | 0 |
| Reasonable Accommodation | 0 | 0 | 0 | 0 | 0 |
| Reinstatement | 0 | 0 | 0 | 0 | 0 |
| Retirement | 0 | 0 | 0 | 0 | 0 |
| Termination | 0 | 0 | 0 | 0 | 0 |
| Terms/Conditions of Employment | 0 | 0 | 0 | 0 | 0 |
| Time and Attendance | 0 | 0 | 0 | 0 | 0 |
| Training | 0 | 0 | 0 | 0 | 0 |
| Other - User Defined | 0 | 0 | 0 | 0 | 0 |
| Findings After Hearing | | | | | |
| Findings After Hearing | 0 | 0 | 0 | 1 | 0 |
| Appointment/Hire | 0 | 0 | 0 | 0 | 0 |
| Assignment of Duties | 0 | 0 | 0 | 0 | 0 |
| Awards | 0 | 0 | 0 | 0 | 0 |
| Conversion to Full-time | 0 | 0 | 0 | 0 | 0 |
| Disciplinary Action | | | | | |
| Demotion | 0 | 0 | 0 | 0 | 0 |
| Reprimand | 0 | 0 | 0 | 0 | 0 |
| Suspension | 0 | 0 | 0 | 0 | 0 |
| Removal | 0 | 0 | 0 | 0 | 0 |
| Other | 0 | 0 | 0 | 1 (100%) | 0 |
| Duty Hours | 0 | 0 | 0 | 0 | 0 |
| Evaluation Appraisal | 0 | 0 | 0 | 0 | 0 |

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

| | | | | | |
|--|-------------|-------------|-------------|-------------|-------------|
| Medical Examination | 0 | 0 | 0 | 0 | 0 |
| Pay Including Overtime | 0 | 0 | 0 | 0 | 0 |
| Promotion Non-Selection | 0 | 0 | 0 | 0 | 0 |
| Reassignment | | | | | |
| Denied | 0 | 0 | 0 | 0 | 0 |
| Directed | 0 | 0 | 0 | 0 | 0 |
| Reasonable Accommodation | 0 | 0 | 0 | 0 | 0 |
| Reinstatement | 0 | 0 | 0 | 0 | 0 |
| Retirement | 0 | 0 | 0 | 0 | 0 |
| Termination | 0 | 0 | 0 | 0 | 0 |
| Terms/Conditions of Employment | 0 | 0 | 0 | 0 | 0 |
| Time and Attendance | 0 | 0 | 0 | 0 | 0 |
| Training | 0 | 0 | 0 | 0 | 0 |
| Other - User Defined | 0 | 0 | 0 | 0 | 0 |
| Pending Complaints Filed in Previous Fiscal Years by Status | | | | | |
| | 2012 | 2013 | 2014 | 2015 | 2016 |
| Total Complaints from previous Fiscal Years | 46 | 59 | 34 | 41 | 34 |
| Total Complainants | 38 | 48 | 33 | 35 | 28 |
| Number of Complaints Pending | | | | | |
| Investigation | 1 | 0 | 0 | 0 | 0 |
| ROI issued, pending Complainant's action | 0 | 0 | 0 | 0 | 1 |
| Hearing | 14 | 28 | 32 | 41 | 31 |
| Final Action | 2 | 0 | 1 | 0 | 3 |
| Appeal | 11 | 13 | 8 | 14 | 24 |
| Complaint Investigations | | | | | |
| | 2012 | 2013 | 2014 | 2015 | 2016 |
| Pending Complaints Where Investigations Exceed Required Time Frames | 0 | 0 | 0 | 0 | 0 |

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APPENDIX C

FDIC POLICIES RELATING TO NON-DISCRIMINATION



APPENDIX C-1

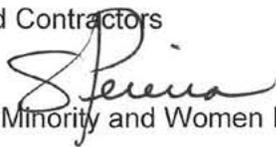
Circular 2710.1 – Equal Opportunity Policy



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 <i>(Bulletins Only)</i> | |

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 Melodee Brooks | TELEPHONE NUMBER (703) 562-6225 |
| 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 immediate action to assess whether or not the alleged

Roles and Responsibilities (cont.)

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 and whether any immediate interim corrective action is required

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

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 to stop the harassment, correct its effects on the affected

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

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) 562-6225, 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 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 (<i>Bulletins Only</i>) | |

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.

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APPENDIX C-4

Circular 2400.2 – Whistleblower Protection Rights



*Name and telephone number has been changed to reflect the new Contact

FEDERAL DEPOSIT INSURANCE CORPORATION
DIRECTIVE SYSTEM

| | |
|---------------------------------------|------------------------------------|
| TYPE AND NUMBER Circular 2400.2 | |
| CONTACT Eileen Halpin | TELEPHONE NUMBER (703) 562-2173 |
| DATE June 6, 2001 | |
| DATE OF CANCELLATION (Bulletins Only) | |

TO: All Employees

FROM: Arleas Upton Kea
Director, Division of Administration (DOA)

SUBJECT: Whistleblower Protection Rights

1. Purpose To inform employees of their rights and remedies under Federal whistleblower protection laws.

2. Scope This circular applies to all current and former FDIC employees and applicants for employment at the FDIC. Where the terms of a negotiated agreement differ from the provisions of this circular, the negotiated agreement is applicable, provided it conforms with Federal law. Any negotiated agreement should be read in conjunction with this circular.

3. Background The Whistleblower Protection Act (5 U.S.C. 2302(b)(8)) protects Federal employees and applicants for employment from retaliatory action or reprisal for whistleblowing.

Additionally, FDIC employees are protected from reprisal for whistleblowing activities under 12 U.S.C. 1831j.

The Inspector General Act (5 U.S.C. Appendix 3, § 7) prohibits reprisal against any employee for making a complaint or disclosing information to an Inspector General.

4. Definitions Terms specific to this circular are defined below:

a. **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.

Definitions (cont'd)

b. **Whistleblowing.** When a Federal employee or applicant for employment discloses information to the OSC, the Inspector General, or other comparable agency official, which the individual reasonably believes evidences:

- (1) a violation of law, rule, or regulation;
- (2) gross mismanagement;
- (3) a gross waste of funds;
- (4) an abuse of authority; or
- (5) a substantial and specific danger to public health or safety.

5. Policy

a. Under the Whistleblower Protection Act, it is prohibited for a Federal official or employee to take, fail to take, threaten to take, or threaten to 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. Employees, former employees, and applicants may appeal a suspected reprisal for whistleblowing.

b. Under 12 U.S.C. 1831j, FDIC employees 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, 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.

c. Under the Inspector General Act, it is prohibited to take or threaten any action against an employee as a reprisal for making a complaint or disclosing information to the Inspector General, unless the complaint was made, or information disclosed, with knowledge of (or with willful disregard for) its falsity.

6. Procedures

Individuals seeking protection under the Federal whistleblower laws shall select one of the following filing remedies.

a. A complaint with the Office of Special Counsel for investigation;

**Procedures
(cont'd)**

- b. A grievance under the FDIC negotiated grievance procedures (if the employee is in a bargaining unit);
 - c. A lawsuit in Federal Court under 12 U.S.C. 1831j; or
 - d. An appeal with the Merit Systems Protection Board.
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7. Contacts

Questions regarding Whistleblower Protection Rights or filing procedures should be directed to the local Labor and Employee Relations representatives, DOA, Personnel Services Branch. Individuals also may contact the Office of Special Counsel at (1-800-572-2249) for information regarding whistleblower disclosures and/or procedures for filing a complaint with the OSC.

8. Effective Date

The provisions of this circular are effective immediately.

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