



FEDERAL DEPOSIT INSURANCE CORPORATION

DIRECTIVE SYSTEM

TYPE AND NUMBER Circular 2710.12	
CONTACT Michael P. Moran	TELEPHONE NUMBER (703) 562-6073
DATE November 20, 2015	
DATE OF CANCELLATION (<i>Bulletins Only</i>)	

TO: All FDIC Employees

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

SUBJECT: Non-Discrimination in FDIC Conducted Education and Training Programs and Outreach Activities

1. Purpose To document the Federal Deposit Insurance Corporation's (FDIC) procedures and guidelines for initiating and processing complaints by those individuals who believe they have been discriminated against in any FDIC conducted educational and training programs and outreach activities.

2. Revision FDIC Circular 2710.12, Complaint Procedures for Individuals Who Believe They Have Been Discriminated Against in a FDIC Conducted Educational or Training Program or Activity, dated October 19, 2010, is hereby revised and superseded.

3. Scope The provisions of this Circular apply to all federal employees and members of the public who believe that they have been discriminated against, individually or as a class in any FDIC conducted educational or training program or outreach activity.

4. Background This revised Circular responds to Executive Order 13160 dated June 23, 2000, and the associated Department of Justice Guidance Document dated January 18, 2001, concerning non-discrimination on the basis of race, color, religion, sex, national origin, disability, age, sexual orientation, and status as a parent in federally conducted education and training programs.

The Executive Order supplements existing laws and regulations that already prohibit many forms of discrimination in both federally conducted and federally assisted educational programs.

Additionally, the provisions of the Executive Order are consistent with other non-discrimination provisions administered by the

FDIC Office of Minority and Women Inclusion (OMWI) pursuant to other federal laws and regulations, and FDIC policy. As such, OMWI, as the investigating office, is responsible for implementing this Executive Order.

5. Authority

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. Policy

It is the policy of the FDIC to provide equal educational and training opportunities to all individuals and classes of individuals, regardless of their race, color, religion, sex, national origin, disability, age, sexual orientation, genetic information, gender identity, and status as a parent. It is also the policy of the FDIC to prohibit retaliation against any individual because he or she raised concerns, reported claims, or filed complaints alleging discrimination. No individual will be unlawfully excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in an FDIC conducted educational or training program or activity based on the covered bases.

7. Procedures and Guidelines

The following procedures and guidelines are applicable to the administrative processing of complaints alleging discrimination covered by this Circular pursuant to Executive Order 13160.

a. **Filing a Complaint.** Any individual who believes himself or herself to be aggrieved by a violation of Executive Order 13160 may personally or through a representative file a written complaint with the FDIC.

All complaints must be filed via mail, facsimile, or hand-delivered within one-hundred and eighty (180) calendar days of the alleged discrimination. Complaints should be sent to:

FDIC Office of Minority and Women Inclusion
3501 Fairfax Drive, VS E-2068
Arlington, VA 22226
Facsimile: (703) 562-6088

b. **Relationship to other Non-discrimination Laws.** FDIC employees who believe they have been discriminated against in any FDIC conducted educational or training program or activity related to their employment, may also file a complaint, using, as appropriate, FDIC Circulars 2710.2, EEOC Discrimination Complaint Procedures or 2710.4, FDIC Discrimination Complaint Procedures.

Complaints filed under Executive Order 13160 as well as FDIC Circulars 2710.2 and 2710.4 will be consolidated for processing.

FDIC employees must indicate whether the complaint is related to their employment, and whether they have filed any other EEO claims arising out of the same circumstances. If so, the complaint filed under Executive Order 13160 will be transferred and consolidated with the other complaint and the enforcement procedures under this Circular will be deemed inapplicable.

If an FDIC employee chooses to proceed solely under Executive Order 13160 or does not timely seek EEO counseling or file a complaint under FDIC Circulars 2710.2 or 2710.4, the enforcement procedures set forth below will govern.

c. **Complete Complaints.** In order to be accepted by the FDIC, all written complaints must be "complete complaints." A complete complaint must be signed by the complainant or by someone authorized by the complainant to sign on his or her behalf, and:

- (1) Include the name, address, and telephone number of the complainant;
- (2) Identify whether the complainant is a federal employee and whether the complainant's involvement in the relevant education program was related to his or her employment; and,
- (3) Describe the alleged discriminatory conduct in sufficient detail to inform the FDIC as to the nature and approximate date of the alleged violation.

d. **Time Limits for Filing Complaints.** As a general matter, all complaints must be filed within one-hundred and eighty (180) calendar days of the alleged discrimination. However, OMWI may extend this time limit:

- (1) If the complainant can demonstrate that he or she had no notice of the time limit and was not otherwise aware; or
- (2) If the complainant can demonstrate that he or she was prevented by circumstances beyond his or her control from submitting the complaint in a timely fashion; or
- (3) For other reasons, or under other circumstances, considered sufficient by the agency.

For purposes of determining when a complaint is timely filed, a complaint mailed to the FDIC will be deemed filed on the date that it is postmarked. A complaint submitted via facsimile or hand-delivery will be deemed filed on the date that it is received by OMWI, by any FDIC supervisor, or by any other official

designated by the agency to receive such complaints. Complaints received by designated officials outside of OMWI will be forwarded to OMWI for processing.

If a complaint is filed within one-hundred and eighty (180) calendar days of the alleged discrimination, but the FDIC subsequently determines that the complaint is not a "complete complaint," the complainant's claims will nevertheless be deemed filed in a timely manner, and the complainant will be given an appropriate opportunity to amend his or her original complaint.

e. **Class Complaints.** Any individual who believes that any specific class of persons has been subjected to discrimination by the FDIC prohibited by Executive Order 13160 or any of its implementing regulations, rules, policies, guidance, and/or this Circular, may file a class complaint with OMWI. This is provided that the individual is either a member of the allegedly aggrieved class of persons or a representative of a member of the allegedly aggrieved class of persons.

f. **Legal Representation.** Any individual filing a complaint under Executive Order 13160 or any of its implementing regulations, rules, policies, guidance, and/or this Circular may be represented and assisted in all stages of these proceedings by an attorney or representative of his or her own choosing. An individual has a responsibility to promptly inform the FDIC if legal counsel is retained. Additionally, an individual has an obligation to notify OMWI if he or she wishes to have any other representative included in these proceedings.

It is the responsibility of the complainant to provide OMWI with the name, address, and telephone number of any attorney or other representative. Also, it is an on-going responsibility of the complainant to advise OMWI as to any changes with respect to the status of his or her legal and/or non-legal representation in any proceeding under this Executive Order or any of its implementing regulations, rules, policies, guidance, or this Circular.

g. **Initial Review by OMWI.** Upon receipt of a complaint filed under the Executive Order and this Circular, OMWI will assess the complaint and determine how to proceed. OMWI will specifically consider whether the complaint is a complete complaint, whether it was filed in a timely manner, and, in the case of an FDIC employee, whether the complaint should be consolidated with another complaint and transferred, if necessary.

After reviewing the complaint, OMWI may need to obtain additional information from the complainant. For example, OMWI may ask the complainant to supply additional information if the

complaint is not complete. Additional information also may be required by OMWI to determine whether to waive the time limits for filing a complaint or whether to consolidate and transfer an FDIC employee's claim. If a complainant fails to provide additional information, or otherwise respond to OMWI's request, within thirty (30) calendar days, without good cause shown, OMWI may dismiss the complaint.

In certain instances, OMWI may determine that a complaint should be dismissed because the alleged discriminatory conduct did not occur in an FDIC conducted education or training program. In such cases, OMWI will issue a brief written determination setting forth the basis for the dismissal and advising the complainant of his or her right to appeal this decision to the Attorney General, Department of Justice for a final determination regarding coverage pursuant to Section 2-203 of Executive Order 13160. Responsibility for issuing such final determinations regarding coverage has been delegated to the Assistant Attorney General for Civil Rights, who will conduct, handle, or supervise the performance of this function.

h. Informal Resolution or Formal Investigation. Before undertaking a formal investigation, OMWI will pursue resolution of all complaints filed under Executive Order 13160 and this Circular, through efforts to achieve voluntary compliance by using the EEO Mediation Program.

If an informal resolution of a complaint between a complainant and the FDIC cannot be reached within forty-five (45) calendar days, or if efforts to achieve an informal resolution appear to become futile, OMWI will initiate a formal investigation. However, efforts to achieve voluntary compliance will be undertaken whenever possible and will continue throughout the course of a formal investigation if and when appropriate opportunities arise.

If a decision is made to initiate a formal investigation, OMWI will notify the complainant in writing. OMWI will attempt to complete the investigation within one-hundred and eighty (180) calendar days of the FDIC's receipt of a complete complaint. The investigation will include a thorough review of the circumstances under which the alleged discrimination occurred and any other circumstances which may constitute, or appear to constitute, discrimination against the complainant.

A formal investigation may require the cooperation and participation of other FDIC employees. Employees with relevant information, who are required by OMWI to participate in any investigation concerning violations of Executive Order 13160 and this Circular, will do so as part of their official duties and during the course of regular working hours. Individuals with responsibility for processing discrimination complaints shall not

be subjected to retaliation for participating in any activity protected by laws prohibiting discrimination in Federal employment or for opposing unlawful discrimination.

Upon completion of a formal investigation, OMWI will prepare a written report setting forth the results of the investigation and determining whether an FDIC employee has violated Executive Order 13160. If OMWI determines that an FDIC employee has violated Executive Order 13160, the Director, OMWI will forward the initial determination along with a recommendation for any corrective and/or remedial action to the Director of the Division or Office in which the alleged discrimination occurred. The Division or Office Director will be the Appropriate Agency Official to respond to the decision in these matters. A copy of the report of investigation will also be sent to the complainant and the employee who is the subject of the report.

If a determination is made that there has been no violation of Executive Order 13160 or any of its implementing rules, regulations, policies, guidance or this directive, a copy of the report of investigation will be sent to both the complainant and the Appropriate Agency Official.

i. **Referral to the Appropriate Agency Official.** Upon receipt of a report from OMWI that indicates there has been a violation of the Executive Order, the Appropriate Agency Official will consider the report of investigation, the determination, and what if any, disciplinary action is appropriate. Any action taken to discipline an employee, including removal from FDIC employment, must be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978.

The Appropriate Agency Official will consult with the Labor and Employee Relations Section and the Legal Division on the determination of disciplinary action. If the Appropriate Agency Official determines that a violation occurred and concurs in the recommended remedial action, the Appropriate Agency Official will take the necessary steps to implement and/or will obtain the required approvals necessary to implement the remedial action under the FDIC's delegations of authority.

Pursuant to Section 4-402(b), nothing in Executive Order 13160 or this Circular authorizes monetary relief to the complainant as a form of remedial or corrective action.

j. **Remedies.** As discussed above, in addition to making recommendations for final decisions regarding disciplinary measures, the Director, OMWI has the authority to make recommendations for corrective and/or remedial action, where appropriate. As a general matter, if there has been a violation of Executive Order 13160 the complainant will be entitled to all

appropriate, non-monetary, equitable relief. The Appropriate Agency Official, based upon the recommendations of the Director, OMWI will attempt to ensure that the aggrieved individual ends up in the same position he or she would have occupied absent discrimination, or a substantially equivalent position.

In the context of violations of Executive Order 13160 policy, specific remedies are likely to include placement in the next available education or training program of a comparable nature; the development of an individualized training opportunity; the cancellation of an unwarranted personnel action or the expungement of adverse materials from agency records; the awarding of a diploma, other certificate, or specific grade; and the provision of reasonable accommodations.

Complainants should be aware that Section 8 of Executive Order 13160 specifically provides that the Order "is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees." Section 8 further provides, however, that the Order is not intended "to preclude judicial review of final decisions in accordance with the Administrative Procedures Act, 5 U.S.C. 701, et seq."

8. Record Keeping Requirements

Records shall be maintained in accordance with FDIC Circular 1210.1, FDIC Records and Information Management (RIM) Policy Manual.

9. Additional Information

For additional information and/or questions regarding this Circular contact OMWI at (877) 275-3342, or for TTY (703) 562-2473.

10. Effective Date

The provisions of this Circular are effective immediately.