



FEDERAL DEPOSIT INSURANCE CORPORATION

DIRECTIVE SYSTEM

TYPE AND NUMBER Circular 2710.3	
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TO: All Employees and Contractors

FROM: Segundo Pereira
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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 Revision FDIC Circular 2710.3, FDIC's Anti-Harassment Program, dated February 4, 2015, is hereby revised and superseded.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 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;

(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

(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

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

(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

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

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.