



FEDERAL DEPOSIT INSURANCE CORPORATION

DIRECTIVE SYSTEM

TYPE AND NUMBER Circular 2710.4	
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TO: All FDIC Employees

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

SUBJECT: FDIC Discrimination Complaint Process

1. Purpose To document the Federal Deposit Insurance Corporation's (FDIC) procedures for initiating and processing individual discrimination complaints based on sexual orientation, gender identity, and status as a parent.

2. Revision FDIC Circular 2710.4, FDIC Discrimination Complaint Procedures, dated October 19, 2010, is hereby revised and superseded.

3. Scope The provisions of this Circular apply to FDIC employees and applicants for employment filing complaints under Executive Orders 11478, 13087, and 13152.

4. Background 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 providing equal opportunity and access to all employment activities.

This revised Circular incorporates certain changes in the FDIC's Policy on Equal Opportunity that outlines the procedures for filing a complaint pursuant to the provisions of the Executive Orders listed below.

5. General Provisions This Circular provides employees and applicants for employment with administrative procedures for initiating and processing discrimination complaints against the FDIC that are within the

jurisdiction of the FDIC. Claims within the jurisdiction of the FDIC include those based on sexual orientation, gender identity (transgender), status as a parent, and retaliation for participating in the EEO complaint process or opposing discriminatory practices on these bases. Note: claims alleging discrimination based on sexual orientation and gender identity can alternatively be processed under Circular 2710.2 and be subject to EEOC jurisdiction as complaints of sex discrimination.

This Circular does not cover general employee dissatisfaction or grievances covered by FDIC Circular 2140.1, FDIC Grievance Procedures (the grievance procedure used for employees not covered by the negotiated grievance procedures). However, when an aggrieved person alleges discrimination in connection with an action that would otherwise be processed as a grievance under FDIC Circular 2140.1, the allegation of discrimination will be processed under the EEOC or FDIC Discrimination Complaint Procedures. In those cases, the FDIC has the authority to cancel the grievance, or that portion of the grievance pertaining to the matter being processed under the EEOC or FDIC Discrimination Complaint Procedures.

A bargaining unit employee may pursue a claim of discrimination through the negotiated grievance procedure or the FDIC Discrimination Complaint Procedures, but not both. The employee must elect one procedure. The employee shall be deemed to have made an election at such time as the employee files a grievance or files a formal discrimination complaint on the same matter, whichever event occurs first. If a formal discrimination complaint is filed after a grievance has been filed on the same matter, the formal discrimination complaint must be dismissed.

6. Authority

The provisions outlined in this Circular are internal FDIC procedures that do not necessarily adhere to provisions set forth by the EEOC, codified in Title 29 of the Code of Federal Regulations, Part 1614.

The authority for this Circular is based on the following Executive Orders. Executive Orders are 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 against Federal employees (and applicants for employment)

based on sexual orientation; and

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

7. Definitions

Terms used in this Circular are defined below:

- a. **Aggrieved Person** – A person who believes he/she has been discriminated against and participates in the EEO counseling process.
- b. **Alternative Dispute Resolution** – A program offered by the FDIC during the informal and formal complaint process that assists the parties to reach early informal resolution in a mutually satisfactory fashion.
- c. **Amendment to a Complaint** – After a formal complaint has been filed, a complainant may amend the complaint to include issues or claims like or related to those raised in the initial complaint. If an amendment is filed prior to the conclusion of the investigation of the initial complaint, the time period for completing the investigation may be extended.
- d. **Claim** – The statement of the alleged issue and basis of discrimination raised by the complainant.
- e. **Complainant** – A person who files a formal EEO complaint.
- f. **Dismissal** – A decision by the FDIC that dismisses a complaint or specific claims contained in a complaint for procedural reasons cited in Section 8-d.
- g. **EEO Counseling** – The required first step in the EEO complaint process.
- h. **EEO Counselor** – An individual who is trained and assigned to provide counseling to aggrieved persons and attempts informal resolution.
- i. **EEO Investigator** – An individual trained and authorized by the FDIC to conduct an impartial and thorough investigation into claims raised in an EEO complaint that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred.
- j. **EEO Posters** – Written material posted throughout the FDIC workplace publicizing the names and business telephone numbers of the FDIC EEO Counselors, a notice of the time limits and necessity of contacting an EEO Counselor before filing a complaint, and a description of the discrimination complaint

procedures.

k. **Final Agency Decision** – The FDIC's final decision, issued by the Director, OMWI, is a reconsideration that either affirms or reverses the findings and conclusions in the Initial Decision.

l. **Formal Complaint** – A written, signed document, which outlines the claim(s) of alleged employment discrimination and provides the address and telephone number of where the complainant can be contacted.

m. **Initial Decision** – Decision by Director, OMWI that either dismisses a complaint, in whole or in part; pursuant to Section 8-d, or addresses the merits of each accepted claim of discrimination and, if appropriate orders corrective action and relief to the complainant when there is a finding of discrimination.

n. **Mediation** – A process by which a neutral person helps individuals involved in the complaint process reach a mutually agreeable resolution.

o. **Report of Investigation** – The completed compilation of statements from witnesses and relevant documents collected during the investigation of the accepted claims of a discrimination complaint.

p. **Settlement Agreement** – A written contract between the complainant and the FDIC that identifies the agreed upon terms for resolving the complaint.

8. Procedures and Guidelines

Complaints of discrimination filed under this Circular will follow similar administrative procedures as used for processing discrimination complaints pursuant to 29 CFR 1614 (Circular 2710.2). The right to file a discrimination complaint within the jurisdiction of the FDIC is not derived from the EEOC's regulations; therefore, certain entitlements afforded by the EEOC are not available to FDIC employees and applicants for employment who file complaints under this Circular. For example, complaints within the jurisdiction of the FDIC cannot request a hearing before an Administrative Judge of the EEOC, an appeal to the EEOC, or a civil action in a U.S. District Court.

The following describes the administrative procedures for claims filed on the basis of sexual orientation, gender identity, and status as a parent. For the sake of simplicity, references are made to complaints filed under this Circular as "FDIC Discrimination Complaint Process."

a. **Initial Action.** An aggrieved person must contact an FDIC Equal Employment Opportunity (EEO) Counselor within forty-five

(45) calendar days from the time he/she knew, or should have known, of the alleged discriminatory event or, in the case of an alleged personnel action, within forty-five (45) calendar days of the effective date of the personnel action in question. A list of FDIC's EEO Counselors may be obtained from OMWI official FDIC EEO posters and the FDIC web site for EEO Counselors.

b. **Counselor Response.** After the aggrieved person contacts an FDIC EEO Counselor, the EEO Counselor will discuss with the aggrieved person the traditional counseling process or, if mediation as appropriate.

(1) **Traditional Counseling.** If traditional counseling is elected, the EEO Counselor has thirty (30) calendar days, unless an extension of not more than sixty (60) calendar days is agreed to, in which to attempt an informal resolution of the matter brought to his/her attention. If the matter is not resolved, the EEO Counselor will provide the aggrieved person written notice of his/her right to file a formal complaint of discrimination.

(2) **Mediation.** If mediation is offered and selected by the aggrieved person, the aggrieved person must agree to extend the EEO Counseling period for up to sixty (60) additional calendar days. If the matter is not resolved within ninety (90) calendar days, the FDIC EEO Counselor will issue the aggrieved person the notice of right to file a formal complaint.

c. **Formal Discrimination Complaint.** The aggrieved person must file a formal discrimination complaint within fifteen (15) calendar days after he/she receives the notice of right to file a complaint. Formal complaints must be filed with one of the following FDIC officials:

(1) Chief, Complaints Processing Branch, OMWI;

(2) Director, OMWI; or

(3) FDIC Chairman. (Note: Complaints filed directly with the FDIC Chairman will be referred to OMWI for processing).

d. **Acceptance/Dismissal of Formal Complaint.** OMWI will acknowledge, in writing, receipt of the formal discrimination complaint. Upon review of the formal complaint and the EEO Counselor's Report, OMWI will notify the complainant in writing of the accepted claims for investigation. OMWI will also notify the complainant in writing of any claims that will be dismissed for procedural reasons or if the complaint will be dismissed in its entirety in an Initial Decision.

OMWI may dismiss a complaint, or individual claims contained in a complaint:

- (1) That fails to state a claim or states the same claim that is pending before or has been decided by the FDIC;
- (2) That fails to comply with the applicable time limits for contacting an EEO Counselor for filing a complaint, unless the agency extends the time limits, or that raises a matter that had not been brought to the attention of an EEO Counselor and is not like or related to a matter that has been brought to the attention of an EEO Counselor;
- (3) That is the subject of a matter raised in a negotiated grievance procedure that permits claims of discrimination covered by this Circular;
- (4) That is moot or alleges a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory, unless the complaint alleges the proposal is retaliatory;
- (5) Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 15 days to a notice of proposed dismissal sent to his/her last known address;
- (6) Where OMWI has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 days of its receipt, or the complainant's response does not address OMWI's request provided that the request included a notice of the proposed dismissal. Instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available;
- (7) That alleges dissatisfaction with the processing of a previously filed complaint; or,
- (8) Where OMWI, strictly applying the criteria set forth in other discrimination complaint decisions, finds that the complaint is part of a clear pattern of misuse of the complaint process for a purpose other than the prevention and elimination of employment discrimination.

e. **Investigation.** All claims of discrimination accepted for processing will be investigated. The investigation will be completed within one hundred eighty (180) calendar days from the filing date of the formal complaint. If an amendment to the

complaint is filed, the investigation will be completed within one hundred eighty (180) calendar days from the filing date of the amendment or three hundred sixty (360) calendar days from the filing date of the initial formal complaint. Upon completion of the investigation, the complainant will receive a copy of the completed Report of Investigation (ROI).

f. Initial Decision

OMWI will review the completed ROI and issue an Initial Decision to the complainant analyzing the merits of each claim of discrimination accepted for processing. If discrimination is found, the Initial Decision will address corrective action appropriate to the finding of discrimination and within the authority of the FDIC.

If the Initial Decision concludes with a finding of no discrimination, the complainant will be informed of his or her right to request, in writing, reconsideration from the Director, OMWI, within thirty (30) calendar days of receipt of the Initial Decision. The complainant will have the opportunity to submit additional information relevant to the accepted claims.

An Initial Decision can also be issued dismissing a complaint for procedural reasons outlined in Section 8-d.

g. Final Agency Decision. Upon a request for reconsideration after the Initial Decision, the Director, OMWI will review the request, along with the Initial Decision, the completed ROI, and any additional information submitted by the complainant, and issue a Final Agency Decision within forty (40) calendar days. The FAD may affirm or reverse the Initial Decision. If there is a finding of no discrimination and/or the dismissal of any claims is affirmed, the Final Agency Decision will effectively close the complaint. If discrimination is found, the Director, OMWI will order appropriate remedies and corrective action within the authority of the FDIC.

h. Remedies and Relief. If the Director, OMWI issues an Initial Decision or a Final Agency Decision with a finding of discrimination based on prohibited factors covered by this Circular, the Director will provide relief consistent with those allowed by existing laws and regulations:

(1) For a FDIC employee, a decision finding discrimination must provide relief, to the extent of its lawful authority, for the employee that does not exceed that allowed under 29 CFR §1614.501(c), exclusive of compensatory and punitive damages.

(2) For an applicant for employment with the FDIC, a decision finding discrimination must provide relief, to the extent of its

lawful authority, for the applicant that does not exceed that allowed under 29 CFR §1614.501(b), exclusive of compensatory and punitive damages.

i. **Employee Responsibility.** OMWI will investigate all aspects of allegations of discrimination accepted for investigation. The investigation includes a thorough review of the circumstances of the complaint and the treatment of members of the complainant's protected group(s) as compared to the treatment of other employees in the organizational segment under which the complaint arose. All FDIC employees having knowledge of the matter have an obligation to cooperate in the investigative process. Failure to cooperate may lead to appropriate administrative action.

j. **Freedom from Restraint, Interference, Coercion, and Retaliation.** Individuals, including complainants, representatives, witnesses, investigators, OMWI personnel, counselors, or other FDIC officials with responsibility for processing FDIC Discrimination Complaints, must not be subjected to retaliation for participating in a protected activity or for opposing discrimination prohibited by policy. A claim of retaliation for participating in the procedures outlined in this Circular will be processed under these procedures beginning with the aggrieved individual contacting an FDIC EEO Counselor.

k. **Effect on Other Entitlements.** Nothing contained in this Circular shall be interpreted to abridge an employee's or job applicant's existing entitlement, if any, to present matters governed by this Circular under the FDIC's grievance procedures or a negotiated grievance procedures, or to present to the EEOC, the U.S. Merit Systems Protection Board, or the U.S. Office of Special Counsel claims concerning matters within their respective jurisdictions.

9. Record Keeping Requirements

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

10. Contact Information

For information related to discrimination matters within the jurisdiction of the FDIC, contact the FDIC's Complaints Processing Branch, OMWI, at 1-877-275-3342 or for TTY (703) 562-2473.

11 Effective Date

The provisions of this Circular are effective immediately.