



FEDERAL DEPOSIT INSURANCE CORPORATION

DIRECTIVE SYSTEM

TYPE AND NUMBER

Circular 2710.2

CONTACT

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DATE

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DATE OF CANCELLATION (*Bulletins Only*)

TO: All FDIC Employees

FROM: Segundo Pereira
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SUBJECT: EEOC Discrimination Complaint Process

1. Purpose To update the Federal Deposit Insurance Corporation's (FDIC) procedures for, and other general provisions and definitions relating to, initiating and processing individual discrimination complaints within the jurisdiction of the U.S. Equal Employment Opportunity Commission (EEOC).

2. Revision FDIC Circular 2710.2, EEOC Discrimination Complaint Procedures, dated October 19, 2010, is hereby revised and superseded.

3. Scope The provisions of this circular apply to all FDIC employees and applicants for employment.

4. Background The Office of Minority and Women Inclusion (OMWI), has delegated responsibility for the FDIC diversity and inclusion, civil rights, and minority and women outreach programs. These programs encompass ensuring 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 changes in Federal Equal Employment Opportunity laws and regulations.

5. General Provisions This circular provides employees and applicants for employment with an overview of the administrative procedures for initiating and processing discrimination complaints against the FDIC that are within the jurisdiction of the EEOC. Claims within the jurisdiction of the EEOC include those based on race, color,

religion, sex (including pregnancy, equal pay, gender identity and sexual orientation), national origin, disability (physical and/or mental), age (40 years or older), genetic information and retaliation for participating in the EEOC discrimination complaint process or opposing discriminatory practices. Claims alleging discrimination based on sexual orientation and gender identity are 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 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 Discrimination Complaint Procedures.

A bargaining unit employee may pursue a claim of discrimination through the negotiated grievance procedure or the EEOC 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

These procedures adhere to provisions set forth by the EEOC, codified in Title 29 of the Code of Federal Regulations, Part 1614.

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. After requesting a hearing, amendments may be raised to the EEOC Administrative Judge.

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 Agency that dismisses a complaint, or certain claims contained in a complaint, for procedural reasons pursuant to 29 C.F.R. 1614.107(a).

g. **EEO Counseling** – The required first step in the EEO complaint process.

h. **EEO Counselor** – An individual who is trained and assigned to provide EEO counseling to aggrieved persons and to attempt informal resolution of the matter raised.

i. **Equal Employment Opportunity Commission (EEOC)** – The Federal agency responsible for enforcing employment discrimination laws and overseeing the EEO discrimination complaint process in the Federal government. The EEOC provides all rules, regulations, and guidance for administering the EEO program.

j. **EEO Investigator** – A trained individual authorized by the FDIC to conduct an impartial and thorough investigation into the claims raised in an EEO complaint that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred.

k. **EEO Posters** – Written material posted throughout the workplace publicizing the names and business telephone numbers of the FDIC EEO Counselors, the time limits and requirements for contacting an EEO Counselor before filing a complaint, and the description of the EEO complaint process.

l. **Final Agency Decision** – The FDIC's written final decision, pursuant to EEOC regulations and relevant case law; that either dismisses a complaint, in whole or in part, or, analyzes the merits of each claim of the complaint, making findings and conclusions, and if appropriate ordering corrective action and relief to the complainant.

m. **Final Agency Order** – The FDIC's written final action issued within forty (40) calendar days of the FDIC's receipt of the Administrative Judge's decision (if a hearing is requested) either

fully implementing or appealing the Administrative Judge's decision.

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

o. **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.

p. **Hearing** – An adjudicatory proceeding conducted by the EEOC Administrative Judge that completes the process of developing a full and appropriate record. A hearing provides a fair and reasonable opportunity to explain and supplement the record and, in appropriate instances, to examine and cross-examine witnesses.

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

r. **Mixed-case Complaint** – A complaint that contains claims that are also appealable to the Merit Systems Protection Board.

s. **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.

t. **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

These procedures adhere to provisions set forth by the EEOC, in Title 29 C.F.R. Part 1614. For an in-depth description of the EEO complaint process, individuals are referred to Part 1614 or the FDIC web site Processing Complaints of Discrimination. Further, individuals who participate in the EEO complaint process will be provided their rights and responsibilities at every stage of the process.

a. **EEO Counseling.** 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 discriminatory 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 page for EEO Counselors.

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

(1) **Traditional Counseling.** If EEO 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 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 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 may also dismiss a complaint or a portion of the complaint in writing, based on procedural reasons pursuant to 29 C.F.R. 1614.107(a) and (b).

A complaint, or individual claims contained in a complaint, may be dismissed:

(1) That fails to state a claim or states the same claim that is

pending before or has been decided by the agency or Commission;

(2) That fails to comply with the applicable time limits, unless the OMWI extends the time limits in accordance with EEOC regulations, or raises a matter that has 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 basis of a pending civil action in a United States District Court in which the complainant is a party provided that at least 180 calendar days have passed since the filing of the administrative complaint, or that was the basis of a civil action decided by a United States District Court in which the complainant was a party;

(4) Where the complainant has raised the matter in a negotiated grievance procedure that permits allegations of discrimination or in an appeal to the Merit Systems Protection Board and indicates that the complainant has elected to pursue the non-EEO process;

(5) That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory, unless the complaint alleges that the proposal or preliminary step is retaliatory;

(6) Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within fifteen (15) calendar days to a notice of proposed dismissal sent to his or her last known address;

(7) 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 fifteen (15) calendar 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;

(8) That alleges dissatisfaction with the processing of a previously filed complaint; or

(9) Where OMWI, strictly applying the criteria set forth in EEOC decisions, finds that the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination.

A clear pattern of misuse of the EEO process requires:

- (a) Evidence of multiple complaint filings; and
- (b) Allegations that are similar or identical, lack specificity or involve matters previously resolved; or
- (c) Evidence of circumventing other administrative processes, retaliating against the in-house administrative processes or overburdening the EEO complaint system.

e. Where OMWI believes that some but not all of the claims in a complaint should be dismissed for the reasons listed above, OMWI will notify the complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file. A determination under this paragraph is reviewable by an administrative judge if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken on the remainder of the complaint.

f. **Investigation.** Claims of discrimination contained in a formal complaint accepted for processing will be investigated. Investigations will be completed within one-hundred eighty (180) calendar days from the filing date of the formal complaint. If an amendment 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 an investigation, the complainant will receive a copy of the Report of Investigation (ROI) along with notification of the right to:

- (1) Request a hearing by an EEOC Administrative Judge within thirty (30) calendar days of receipt of the ROI; or
- (2) Request a final agency decision based on the ROI.

Note: If OMWI does not provide the ROI to the complainant within one-hundred eighty (180) calendar days from the filing of the formal complaint, the complainant may request a hearing by the EEOC or file a civil action in an appropriate U.S. District Court at any time after one-hundred eighty (180) calendar days have elapsed from the filing of the formal complaint.

g. **Final Agency Action.** The Director, OMWI will issue either:

- (1) A final agency order within forty (40) calendar days of receipt of the Administrative Judge's decision if a hearing is requested;
- (2) A final agency decision within sixty (60) calendar days

upon receipt of the complainant's request for such a decision;
or

(3) A final agency decision within sixty (60) calendar days upon expiration of the thirty (30) calendar day period to either request a hearing or a final agency decision without a hearing, where the complainant does not submit a request for either a hearing or a final agency decision without a hearing.

h. **Appeal to Final Agency Action.** The complainant may file an appeal to the EEOC within thirty (30) calendar days of receipt of the final agency action; or, if it is a mixed-case complaint, may appeal the decision to the Merit Systems Protection Board.

i. **Right to File a Civil Action.** In lieu of an appeal to the EEOC, the complainant may file a civil action in U.S. District Court either:

(1) Within ninety (90) calendar days of receipt of the FDIC's final agency action, or after one-hundred eighty (180) calendar days from the filing of the formal complaint, if the FDIC fails to issue a final agency action; or

(2) Within ninety (90) calendar days of receipt of the EEOC's decision on an appeal or within one-hundred eighty (180) calendar days, if the EEOC fails to issue a decision.

j. **Complaints of Discrimination based on Age.** Employees and applicants for employment who believe that they have been discriminated against based on their age (40 years or older) may, in lieu of filing a complaint under the EEOC Discrimination Complaint Procedures, file a civil action in U.S. District Court within one-hundred eighty (180) calendar days of the alleged discriminatory event or personnel action. However, the complainant must give the EEOC written notice of his/her intent to sue the FDIC at least thirty (30) calendar days before filing a civil action.

k. **Equal Pay Act Complaints.** Employees who believe that they have been discriminated against on the grounds of sex-based wage discrimination may:

(1) File a complaint under the EEOC Discrimination Complaint Procedures; or

(2) File a civil action in U.S. District Court.

Note: Any civil action alleging violations of the Equal Pay Act must be filed within two (2) years of the date of the occurrence, or if the violation is alleged to be willful, within three (3) years of its occurrence, regardless of whether an administrative complaint is filed.

l. Remedies and Relief. If the EEOC finds that the FDIC has discriminated against:

(1) An FDIC employee, the EEOC is authorized to provide relief for the employee pursuant to 29 C.F.R. § 1614.501(c);

(2) An applicant for employment with the FDIC, the EEOC is authorized to provide relief for the applicant pursuant to 29 C.F.R. § 1614.501(b).

m. Employee Responsibility. Pursuant to 29 C.F.R. §1614.108, Federal agencies are required to investigate all aspects of claims of discrimination. 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 against the treatment of employees outside the complainant's protected group(s) in the organization 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.

n. Freedom from Restraint, Interference, Coercion, and Retaliation. Individuals, including complainants, representatives, witnesses, investigators, OMWI personnel, counselors, or other FDIC officials with responsibility for processing discrimination complaints, must not be subjected to retaliation for participating in any activity protected by laws prohibiting discrimination in Federal employment or for opposing unlawful discrimination.

A claim of retaliation will be processed under this policy.

o. Effect on Other Entitlements. Nothing contained in this circular should be interpreted to abridge an employee's or applicant for employment's existing entitlement, if any, to present matters governed by this circular under the FDIC's grievance procedure or a negotiated grievance procedure, 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. Contacts

For information related to discrimination matters within the jurisdiction of the EEOC, contact the FDIC's Complaint 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.