



FISCAL YEAR 2021

No FEAR Act

ANNUAL REPORT TO CONGRESS
Federal Deposit Insurance Corporation

FDIC

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INTRODUCTION

The FDIC's Equal Employment Opportunity (EEO) mission is to prohibit and address unlawful discrimination in the workplace. We are committed to maintaining a healthy work environment that fosters diversity, equity, inclusion, and accessibility (DEIA), and we recognize that these priorities must be linked with specific DEIA objectives.

In addition, we view EEO complaints holistically as an individual employee's (or applicant's) personal testimony regarding a belief that they have been denied an opportunity or civil right which invariably may impact their full inclusion. Therefore, we review complaints carefully, not only to determine whether illegal discrimination occurred, but to ascertain whether someone is being unfairly excluded from the FDIC family. In these instances we seek to address any underlying conditions that contributed to the complaint.

With this framework as a backdrop, this year's No FEAR Act report addresses progress toward our goal to develop and implement a more comprehensive, integrated, and strategic focus on EEO. OMWI is primarily responsible for the FDIC's EEO program, and has formed strong collaborative relationships with senior leadership and program offices across the FDIC. We also provide the agency's managers and supervisors with appropriate EEO and DEIA training and other resources to help them understand how to successfully carry out their EEO duties and responsibilities.

While we are proud of the progress that we have made thus far, we recognize that there is more that can and will be done to fulfill our mission and EEOC objectives. We trust that you will see our commitment to and strategy for progress, as well as our plans for greater achievement in the years ahead, in the content of this report.

Accomplishments and Actions Taken

On July 30, 2021, the FDIC issued its No FEAR Act Notice to all employees describing their right to a workplace that is free from discrimination, harassment, retaliation, and prohibited personnel practices, including reprisal for whistleblowing activities. This Notice further provided employees with specific information on how to exercise their rights.

DEIA Progress

At the agency, we foster a culture of excellence by ensuring every employee has equal opportunity to develop and excel in their career. In March 2021, the FDIC released its *DEI Strategic Plan*,¹ which lays out a bold vision for embedding DEIA into every aspect of our operations. The FDIC also established a new performance goal to promote DEIA in our workforce and to hold FDIC leadership accountable for advancing DEIA and EEO.

¹ The FDIC's *DEI Strategic Plan, 2021–2023* is available at: <https://www.fdic.gov/about/diversity/pdf/dei2021.pdf>.

Since publishing our *DEI Strategic Plan*, we have included accessibility in our agency DEIA initiatives, and are committed to both meeting the accessibility requirements of the Rehabilitation Act of 1973 for individuals with disabilities and exceeding our prior internal expectations. For instance, in FY 2021, automated captioning, meeting conference bridge phone numbers for American Sign Language (ASL) interpreters, the ability to “pin” the video feeds of ASL interpreters, and participant spotlighting were added to the MS Teams meeting platform for all FDIC employees. The FDIC Section 508 Team leveraged ServiceNow to create a portal for its customers to submit requests for 508 services, including 508 training, document remediation assistance, Section 508 testing, and Voluntary Product Accessibility Template (VPAT) reviews.

Promoting Alternative Dispute Resolution

On January 21, 2021, the EEOC noted in its review of the FDIC’s Management Directive 715 (MD-715) report that the agency’s ADR/EEO mediation acceptance rate in the pre-complaint stage of the EEO process is below 50 percent. In response, OMWI initiated a benchmarking review of the informal EEO process to determine why more employees do not opt to participate in mediation. Steps initiated to improve the ADR participation rate, include OMWI working with agency management to encourage resolution, and we are seeking feedback, in the form of a questionnaire, from participating employees in order to implement process improvements. Our goal is to bolster our overall organizational numbers wherein we resolve conflict early in a dispute and at the lowest level possible. Upon completion of the benchmarking initiative by the close of 2022, OMWI will develop additional conflict resolution tools to improve EEO ADR participation at the FDIC.

Processing Conflict Complaints Timely

The EEOC provides that conflict cases are EEO complaints where the alleged responsible management official is the agency head, a staff member or employee of the agency head, someone who occupies a high-level position of influence at the agency, the EEO Director, or a supervisor in the EEO office. In FY 2021, OMWI developed and implemented an Internal Conflict EEO Complaint Process policy and corresponding standard operating procedures to ensure the timely investigation and processing of all EEO conflict complaints performed by outside contractors and other governmental agencies. Notably, in FY 2021, the FDIC did not experience any timeliness issues with the processing of EEO conflict complaints.

Improving the Interview Process

During the reporting period, appointment/hiring was the most frequently filed EEO issue. Based on this trend we realize that minimizing bias in hiring and promotion opportunities is critical to building and maintaining a diverse workforce. As outlined in the Agency’s *DEI Strategic Plan*, the FDIC initiated DEIA best practices to mitigate bias in the interview process. Upon request in FY 2021, OMWI reviewed Division and Office interview questions to ensure they were relevant to the job requirements and inclusive. For example, OMWI ensured questions were gender neutral and captured how candidates address, handle or interact with a diverse group.

Implementing EEO Benchmark Study

The FDIC continually strives to build a workplace and culture where all employees feel free to exercise their civil rights and where employees are held accountable for violations of antidiscrimination laws. Further, we are focusing on an inclusive culture where differences are celebrated, because these unique characteristics make our workforce stronger and enhance our ability to fulfill our mission responsibilities. For these reasons, in FY 2021, OMWI initiated a process to benchmark other agencies' equal employment programs for preventing and addressing discrimination and retaliation. The results of this effort will be integrated into process enhancements for our EEO program in 2022.

NO FEAR ACT REPORT REQUIREMENTS

POLICIES

The FDIC endeavors to embed EEO into our everyday policies, procedures, and practices, and to make EEO principles a fundamental part of our culture. This dedication to EEO is embraced by our leadership and communicated through the ranks. In October 2020, FDIC issued the agency's EEO policy statement, reinforcing the commitment to the principles of EEO.

The EEO policy statement makes clear that discrimination and retaliation will not be tolerated at the FDIC. It explains the commitment to EEO and the promotion of a strong affirmative employment program. Additionally, the policy statement emphasizes that managers and supervisors share the responsibility for ensuring EEO and for achieving progress toward a diverse workforce at all levels of the agency.

Further, we strive to maintain clearly defined policies and procedures to prevent all forms of discrimination, including harassment and retaliation. To help prevent discrimination and inform managers, supervisors, and employees of the consequences for committing acts of discrimination, the FDIC promulgated and enforces, EEO/antidiscrimination and whistleblower, policies and procedures applicable to all employees and applicants for employment.

For instance, the FDIC's Anti-Harassment Program defines harassment and inappropriate conduct. To ensure as inclusive a workplace as possible, this policy is purposefully broad. It identifies multiple avenues of redress for claims of harassment and does not limit employees to the EEO process. Additionally, the program reiterates the responsibilities of both managers and supervisors to prevent and promptly address harassing conduct in the workplace. Any employee found to have engaged in harassment or discrimination in violation of this policy is subject to disciplinary action.

The agency's Whistleblower Protection Rights Directive explains employees' rights and protections for disclosing information reasonably believed to reflect a violation of law, rule, or regulation, gross mismanagement or waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. FDIC issued a statement in July 2021 reiterating that employees must be able to make whistleblower disclosures without fear of retaliation.

Number of Employees Disciplined

In the event the agency is sanctioned with an EEO-related finding of discrimination, management conducts a review to determine whether taking disciplinary action is appropriate against the official(s) involved in the matter. Also, OMWI tracks these decisions and reports trends, issues, and problems to senior leadership for appropriate actions. Notably, during the reporting period, neither the EEOC, the Merit Systems Protection Board, the Office of Special Counsel, nor a federal court issued any findings against FDIC. However, in FY 2021, the FDIC implemented the terms of two findings of discrimination issued in prior years.

During the FY 2021 reporting period, there were 15 complaints investigated under the agency's Anti-Harassment Program. Of those complaints, 13 were found to be unsubstantiated and two investigations resulted in verbal counselings.

PRACTICAL KNOWLEDGE GAINED

As the FDIC provides services that meet the changing needs of the banking system and the public, we also endeavor to meet the needs of our valued employees. We regularly review all aspects of our agency to ensure we are putting in place EEO initiatives, policies, and training programs to support our workforce in order to accomplish our mission. Through this ongoing analysis, we gain practical knowledge and determine how best to address any shortcomings identified. Below are the key areas where practical knowledge was gained.

Engagement

The FDIC recognizes that engaged employees are more likely to identify with, and align their own goals with, the agency's goals and mission.

OMWI believes that every employee's unique experience, background, and characteristics – seen and unseen – influence how they engage with one another in the workplace. In support of this belief, OMWI launched a series of "Listening Sessions" in 2021 with the aim of learning more about employees' unique experiences and perspectives and how they impact them in the workplace. The sessions included: FDIC's Commitment to Anti-Discrimination and Anti-Harassment; Unmasking Anti-Asian Violence; Xenophobia and Bias; PRIDE in the Federal Workplace; Persons with Disabilities; Veterans; and Religious Beliefs.

Additionally, the Chairman's Diversity Advisory Councils (CDACs) and the FDIC's Employee Resource Groups (ERGs) provide perspective on DEIA issues and help foster a culture of inclusion at the agency. In addition to serving as a resource for employees, these groups help inform agency leadership about issues that are of concern to group members and the wider FDIC community. This feedback helps to shape the goals articulated in the FDIC's *DEI Strategic Plan*.

ERGs provide invaluable support to the workforce. Their events and activities throughout the year increase cultural intelligence and raise awareness of issues affecting employee performance. In addition to collaborating with OMWI to present federally recognized Special Emphasis Programs, the ERGs hosted many meetings, workshops, mentoring programs, networking efforts, and events throughout the year. Some of these items included the following:

- Corporate Advocacy Network for Disability Opportunities (CAN DO) hosted "Coffee and Convo," during which participants discussed issues facing individuals with disabilities in the workforce.
- PRIDE, the FDIC's LGBTQ ERG, co-sponsored, along with the other financial sector regulatory agencies and interagency ERGs, an event titled, "Pride in the Federal Workplace." The virtual event featured openly-LGBT executives who discussed their careers, challenges they have faced, and career practice pointers. The event also included a fireside chat with NCUA Chairman Todd Harper.
- Partnership of Women in the Workplace (POWW) hosted several events, including: Women in Leadership; "Getting Out of Your Own Way – job postings and interviews;" and Being an Advocate for Yourself and Others.
- Networking Inclusion and Advancement for African American-Women: African American Women with a Purpose (NIA) collaborated with the a Corporate Recruitment and Minority Recruitment Task Force to develop means to effectively reach and recruit diverse students to apply for FDIC Financial Institution Specialist and other entry-level positions.

NIA also developed an informative program designed to help women successfully navigate their careers. The program featured a rare opportunity for women and women of color to hear career advice, anecdotes, and the history of the FDIC from a former African American FDIC Division Director.

- Association of African American Professionals (A3P) collaborated with several ERGs to host two DEI events on "Challenges Faced by Ethnic Minorities in the Workplace: A Dialogue on Breaking Down Barriers." More than 500 employees participated in these interactive events, which featured DEI workplace statistics, a series of informative short videos, and guided dialogues on:

- The main challenges/barriers that ethnic minorities and women face in the workplace,
- The importance and benefits of having ethnic minorities and women as part of an organization or work team,
- How organizations can remove barriers to create a more inclusive and equitable work environment for ethnic minorities and women, and
- Ways to promote DEI of ethnic minorities and women in the workplace.

A3P also partnered with the “FDIC Pathways Internship Program” to deliver presentations at a predominantly Black High School and a Historically Black College or University (HBCU). The purpose of the presentations were to educate students about internship opportunities at the FDIC, the eligibility criteria, and how to apply in an effort to increase workforce diversity. During the year, A3P provided internship information to more than 60 high school and college students. Further, they helped four high school students successfully apply for the FDIC’s 2022 Pathways Internship program.

Training

As previously stated, OMWI is committed to raising awareness and promoting mediation to resolve complaints at the earliest stage within the EEO process. The FDIC provides information to managers and supervisors on ADR techniques and encourages employees to consider mediation when a complaint has been filed. Management is required to participate in mediation if the complainant elects mediation and the FDIC determines the matter is suitable for mediation. We recognize that strategically emphasizing the benefits of mediation to managers, supervisors, and employees will yield beneficial results. Accordingly, we continue to build upon our efforts to promote and proactively leverage strategies to identify, address, and resolve workplace conflicts before they become formal complaints.

For the reporting period, the FDIC provided the following ADR related training:

- EEO and Diversity Workshop for Supervisors,
- No FEAR Act Training,
- Negotiation Skills,
- Resolving Conflict on Your Team: A Course for Non-Supervisory Team Leaders, and
- Facilitating Effective Conversations: Resolving Conflict Between Employees.

The FDIC conducted additional ADR training through its OMWI Forum Webinar Series: FDIC EEO Mediation Program. This webinar provided all employees with information on how mediation is used in the EEO process, the options employees have to participate in mediation, what happens during mediation, and the benefits of using mediation to resolve EEO complaints.

No FEAR Act Training

During FY 2021, the FDIC updated and improved its web-based No FEAR Act training to comply with the provisions of the Elijah Cummings Federal Employees Antidiscrimination Act of 2020. We plan to roll out the revised training in 2022.

EEO Training

In collaboration with the FDIC's Corporate University (CU), OMWI will continue to revise the EEO and Diversity training for managers and supervisors. The training is designed to provide participants information regarding EEO policies and procedures, their role and responsibilities in the EEO process, and the benefits of ADR mediation.

NO FEAR ACT DATA ANALYSIS

EEO Complaint Activity in Federal Court and Disposition

In each year from 2017 through FY 2019, FDIC received a minimal number of new employment cases (four) filed in various federal District Courts. There was an uptick in new federal cases filed in FY 2020, but the number of new cases declined in FY 2021 (when three new cases were filed). The total number of pending district court cases at any time during FY 2021 was the same as the peak of nine cases in FY 2017.

Fiscal Year	2017	2018	2019	2020	2021
Pending District Court Cases	9	3	3	7	9
Pending Appellate Court Cases	4	2	1	0	1
New Cases Filed in District Court	2	0	2	5	3
Settlements	1	1	1	0	1
Withdrawals	1	0	0	0	0
Final Judgment for Complainant	0	0	0	0	0
Final Judgment for Agency	4	2	1	1	1

Judgment Fund Reimbursements and Budget Adjustment

The FDIC is an independent agency, and with the exception of the FDIC’s Office of Inspector General (OIG), is not funded through congressional appropriations. In FY 2021, there were no judgments against the FDIC, including the OIG, from cases pending or resolved in federal District Court. Therefore, no budget adjustments were necessary.

Agency’s EEO Complaint Processing

OMWI’s Equal Opportunity Compliance and Training (EOCT) Branch is responsible for managing the FDIC’s EEO complaint process pursuant to 29 C.F.R. Part 1614. During the reporting period, the FDIC employed 6,036 employees (5,621 permanent employees and 415 term and temporary employees). Overall, the agency experienced a decrease in the number of formal complaints filed during the reporting period.

EEO Complaint Activity

The number of newly initiated informal counselings decreased from 48 in FY 2020 to 43 in FY 2021. One counseling was closed late due to an internal FDIC miscommunication for a remand from an EEOC administrative judge. OMWI has taken steps to improve communication and follow-up to prevent future delays.

Twenty-nine formal complaints were filed in FY 2021, down six percent from FY 2020 and 32 percent from FY 2019. In fact, FY 2021 marks a five-year low in the number of formal complaints, as illustrated below.



Complaints by Basis

For FY 2021, age, reprisal, and sex were the most frequently filed bases. In addition, individuals filed 15 complaints on the basis of age, in comparison to 12 complaints filed in FY 2020, an increase of 25 percent. Regarding the basis of reprisal, there were 13 complaints filed in FY 2021, in comparison to 17 filed in FY 2020, a decrease of 23 percent. Concerning the basis of sex, there were 11 complaints (10-female, 1-male) filed in FY 2021, in comparison to 20 complaints (12-female, 7-male, 1-LGBT) filed in FY 2019, a decrease of eight percent. Of the most frequently filed bases from prior years, complaints filed on the basis of race experienced the most significant decrease this reporting period: in FY 2021, nine (six-Black, one-White, one-Asian, and one-2 or more races) complaints were filed on the basis of race, in comparison to 15 (nine-Black, five-White, one-Asian) filed in FY 2020, a decrease of 40 percent.

	2017	2018	2019	2020	2021
Race	15	10	21	15	9
Color	4	2	5	3	2
Religion	0	0	3	2	1
Reprisal	14	19	20	16	14
Sex ²	16	9	20	11	11
National Origin	2	1	6	2	2
Equal Pay Act	3	0	0	0	1
Age	10	10	18	12	15
Disability	13	10	14	7	8
Genetic Information	0	0	0	0	0

² Male, Female, Pregnancy, Sexual Orientation, Sexual Identity

Complaints by Issue

For FY 2021, the most common complaint issues related to appointment/hire, non-sexual harassment, and promotion. In FY 2021, there were 13 appointment/hire complaints, in comparison to three such complaints in FY 2020, an increase of 76 percent. With respect to claims alleging non-sexual harassment, there were eight claims filed in FY 2021, in comparison to six claims filed in FY 2020, an increase of 33 percent. During FY 2021, there

were six claims related to promotion in comparison to nine in FY 2020, a decrease of 57 percent. For claims alleging terms and conditions of employment, there were five claims filed in FY 2021, in comparison to nine claims filed in FY 2020, a decrease of 44 percent.

Top Three Bases		Top Three Issues	
	% total complaints filed		% total complaints filed
FY 2021		FY 2021	
Age	51.7%	Appointment/Hire	44.8%
Reprisal	44.8%	Harassment (non-sexual)	27.5%
Sex	37.9%	Promotion	20.6%
FY 2020		FY 2020	
Reprisal	54.8%	Promotion	29.0%
Race	48.3%	Terms and Conditions	28.5%
Sex	38.7%	Harassment (non-sexual)	19.3%

Even with the decrease in the number of complaints filed, in FY 2021 OMWI began looking carefully at the bases and issues of complaints filed during the last five fiscal years to ascertain any consistent trends. For example, although there was a decrease in the number of reprisal complaints filed, it consistently remained one of the top three complaint bases throughout the past five fiscal years. At the conclusion of the review in FY 2022, OMWI will develop and implement action plans in FY 2023 to address noted patterns and conduct targeted training.

Timeliness

Over the course of FY 2021, OMWI completed 95 percent of all EEO complaint investigations in a timely manner, a slight decrease from the timely completion rate of 96.7 percent in FY 2020. In addition, OMWI reduced the average length of an investigation by 10 days. There were 20 investigations completed in FY 2021, with an average processing time of 190 days; in FY 2020, the average processing time for an investigation was 200 days. In FY 2021, 19 investigations were timely completed in accordance with EEOC regulations, but one complaint investigation was not timely processed. OMWI has resolved the program deficiency that caused the late investigation, wherein internal EEO staff will provide email communications to the Branch Chief that clearly identifies new formal complaints. In addition, we will continue to assess internal EEO complaint standard operating procedures to ensure that we meet and or exceed all statutory timeframes.

Fiscal Year	Complaints Filed	Investigations Average Days	% Timely
2021	29	190	95.0%
2020	31	200	96.7%
2019	43	201	97.6%
2018	33	187	96.9%
2017	30	197	100%

The average processing time for the four Final Agency (FAD) Decisions that FDIC issued on the merits of a complaint was 43 days; the maximum processing time under EEOC requirements for a FAD is 60 days. Four class action complaints were filed during FY 2021, with three being filed by the same applicant on the bases of race, age, and reprisal regarding appointment/hire for a number of FDIC Legal Division positions. The fourth class action was filed by a current FDIC employee on the basis of sex (female), age, and reprisal regarding her performance management process/evaluation, work assignments, and promotion opportunities. The employee subsequently withdrew the class complaint and instead requested processing as an individual complaint. No cases resulted in a finding of discrimination during FY 2021, but the FDIC implemented the terms of two findings of discrimination issued in prior years.

Actions Planned

The agency will continue our efforts to promote ADR and proactively leverage strategies to identify, address, and resolve workplace conflicts before they become formal complaints. OMWI will take additional steps to encourage employees to resolve workplace disputes at the earliest stages as the majority of the EEO complaint resolutions in 2021 occurred at the hearing stage. Additionally, OMWI will continue to monitor the agency’s complaint activity compared to government-wide activity and the activity at agencies most similar to the FDIC, to ensure that we have the benchmark information necessary to address workplace concerns, develop strategies to reduce complaint processing timeframes and make improvements that positively impact the agency’s EEO complaint program.

CONCLUSION

The decrease in the number of formal complaints filed in FY 2020 and FY 2021 reflects a continual positive trend. Throughout FY 2021, the FDIC carried out proactive and effective communication with employees about their rights, protections available to them, major changes in the agency’s organization, policies, and DEIA strategic goals and initiatives. As described in this report, FDIC, led by OMWI, continued to make important strides in its efforts to foster and promote an inclusive workplace free from harassment and discrimination.

APPENDIX A

CHAIRMAN EEO POLICY STATEMENT





EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

October 22, 2020

When I joined the FDIC two years ago, I affirmed my commitment to a workforce that is diverse and inclusive, reflecting the communities we serve, and respecting the value and contributions of all employees. Since then, we have steadily increased diversity across the organization, but the journey to truly eliminate inequality continues.

I welcome this opportunity to reaffirm my commitment to the principles of equal opportunity, non-discrimination, diversity and inclusion (D&I), and equal access for all individuals across all our activities.

The FDIC will continue its work to uphold equal opportunity for all employees and applicants for employment regardless of race, religion, color, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age, and genetic information.

This commitment will be reflected in all of the FDIC's personnel and employment programs, management practices, and decisions, including our recruitment and hiring; promotions, transfers, and reassignments; training and career development; benefits; and more. We will provide reasonable accommodations to employees and applicants with disabilities, and for religious observances and practices, to ensure a fair and level playing field for all.

The FDIC does not tolerate discrimination, harassment (including sexual harassment), or retaliation, and every allegation of these unlawful behaviors is taken seriously. FDIC managers and supervisors must address harassment allegations immediately and appropriately.

Employees should avail themselves of the resources available, including the EEO complaint process, if they are being treated unfairly. Retaliation against individuals for their participation in the EEO complaint process or opposition to discriminatory practices is prohibited.

Earlier this year, I announced a number of specific initiatives we have undertaken to increase diversity in our workforce and our leadership, to create a culture of excellence that supports and sustains high performance, to educate all employees on the importance of D&I, and to identify and eliminate barriers to successfully meeting our strategic D&I objectives. This work will continue and as we cultivate an FDIC that is accessible, inclusive, and diverse—that treats everyone with dignity and respect and embraces our differences.

For more information on the FDIC's Equal Opportunity Policy and the Anti-Harassment Program, I encourage you to read [Circular 2710.1](#) and [Circular 2710.3](#). Bargaining unit employees may wish to review the grievance procedures included in the FDIC-NTEU Collective Bargaining Agreement related to equal employment opportunity.

A handwritten signature in cursive script that reads "Jelena McWilliams".

Jelena McWilliams
Chairman

APPENDIX B

SUMMARY OF FDIC COMPLAINT DATA



APPENDIX B1

Federal Court Data



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

FEDERAL CASES PENDING in FY 2021

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	9
Pending Appellate Court Cases	1
New Cases Filed in District Court	3

	ALLEGING A VIOLATION OF							Whistleblower	
	Antidiscrimination Laws							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 FY2021	0	1	0	0	1	2	3	1	1
Still pending at end of FY2021	0	0	0	0	1	2	4	0	0
2. Disposition of Cases (including dismissals)									
Settlements	0	0	0	0	0	1	1	0	0
Withdrawals	0	0	0	0	0	0	0	0	0
Final Judgment for Complainant	0	0	0	0	0	0	0	0	0
Final Judgment for Agency	0	1	0	0	1	1	1	1	1
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								

5USC 2302(b)(1), 2302(b)(9) - Prohibited Personnel Practices
 5USC 206(d) - Equal Pay Act
 29USC 631, 633a - Age Discrimination In Employment Act; 791 - Rehabilitation Act
 42USC 2000e-16 (Title VII of the Civil Rights Act)

APPENDIX B2

EEO DATA POSTED PURSUANT to the No FEAR Act



No FEAR Act EEO Data

Data as of 09/30/2021

[Printable Version](#) 260KB ([PDF help](#))

Complaint Activity

Complaint Activity	2016	2017	2018	2019	2020	FY2021 YTD
Number of Complaints Filed	40	30	33	43	31	29
Number of Complainants	34	28	30	39	30	26
Repeat Filers	4	2	3	3	1	2

Complaints by Basis

Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.

	2016	2017	2018	2019	2020	FY2021 YTD
Race	23	17	14	23	15	9
Color	11	3	2	5	4	2
Religion	3	0	0	3	3	1
Reprisal	18	14	21	22	17	13
Sex	20	17	12	21	12	11
Pregnancy Discrimination Act	1	1	0	0	0	0
National Origin	9	3	2	7	3	2
Equal Pay Act	0	3	0	1	0	1
Age	24	10	12	18	12	15
Disability	10	12	15	13	7	8
Genetic Information	0	0	0	0	0	0
Non-EEO	4	3	2	3	2	0

Number of Complaints Alleging Each Type of Claim

Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed.

	2016	2017	2018	2019	2020	FY2021 YTD
Appointment/Hire	8	3	3	3	3	13
Assignment of Duties	6	5	4	7	3	1
Awards	1	0	2	1	1	1
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	2	1	1	0
Warning	0	4	7	2	1	1
Reprimand	0	1	1	0	2	0
Removal	0	0	1	4	3	1
Suspension	0	1	1	1	0	0

Other	8	2	0	0	0	0
Duty Hours	0	0	0	1	0	0
Evaluation Appraisal	8	10	12	10	6	4
Examination Test	1	0	0	0	0	0
Harassment						
Non-Sexual	13	15	12	14	6	8
Sexual	0	1	3	1	4	0
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	2	3	0	3	0	1
Promotion Non-Selection	11	7	10	12	9	6
Reassignment						
Denied	1	0	2	2	1	3
Directed	1	2	1	0	0	2
Reasonable Accommodation	2	4	5	3	2	2
Reinstatement	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0
Retirement	0	0	1	0	0	0
Sex Stereotyping	0	0	0	0	0	0
Telework	0	4	5	4	1	0
Termination	2	3	2	4	3	1
Terms/Conditions of Employment	2	8	8	14	8	4
Time and Attendance	6	9	8	7	2	1
Training	2	4	5	3	2	3
Other	8	2	0	0	0	0

Processing Time						
	2016	2017	2018	2019	2020	FY2021 YTD
Complaints pending during fiscal year						
Average number of days in investigation	179	197	187	201	200	190
Average number of days in final action	40	38	32	36	41	28
Complaints pending during fiscal year where hearing was requested						
Average number of days in investigation	193	213	195	202	201	178
Average number of days in final action	34	11	27	22	39	23
Complaints pending during fiscal year where hearing was not requested						
Average number of days in investigation	172	173	165	197	199	211
Average number of days in final action	45	48	39	67	38	43

Complaints Dismissed by Agency						
						FY2021

	2016	2017	2018	2019	2020	YTD
Total Complaints Dismissed by Agency	3	8	2	3	2	5
Average Days pending prior to dismissal	517	360	128	103	109	113

Complaints Withdrawn by Complainants

	2016	2017	2018	2019	2020	FY2021 YTD
Total Withdrawn by Complainants	3	0	8	0	1	2

Total Final Actions Finding Discrimination

	2016	2017	2018	2019	2020	FY2021 YTD
Total Number of Findings	0	0	0	1	0	0
Without Hearing	0	0	0	1	0	0
With Hearing	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis

Note: Complaints can be filed alleging multiple Bases. The sum of the bases may not equal total complaints filed.

	2016	2017	2018	2019	2020	FY2021 YTD
Total Number of Findings	0	0	0	1	0	0
Race	0	0	0	0	0	0
Color	0	0	0	0	0	0
Religion	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0
Sex	0	0	0	0	0	0
National Origin	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0
Age	0	0	0	0	0	0
Disability	0	0	0	1	0	0
Genetic Information	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0

Findings After Hearing

Findings After Hearing	0	0	0	0	0	0
Race	0	0	0	0	0	0
Color	0	0	0	0	0	0
Religion	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0
Sex	0	0	0	0	0	0
National Origin	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0
Age	0	0	0	0	0	0
Disability	0	0	0	0	0	0

Genetic Information	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0
Findings Without Hearing						
Findings Without Hearing	0	0	0	1	0	0
Race	0	0	0	0	0	0
Color	0	0	0	0	0	0
Religion	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0
Sex	0	0	0	0	0	0
National Origin	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0
Age	0	0	0	0	0	0
Disability	0	0	0	1	0	0
Genetic Information	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue						
	2016	2017	2018	2019	2020	FY2021 YTD
Total Number of Findings	0	0	0	1	0	0
Appointment/Hire	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0
Awards	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0
Suspension	0	0	0	0	0	0
Removal	0	0	0	0	0	0
Other	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0
Examination Test	0	0	0	0	0	0
Harassment						
Non-Sexual	0	0	0	0	0	0
Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	0	0
Promotion Non-Selection	0	0	0	0	0	0
Reassignment						
Denied	0	0	0	0	0	0
Directed	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0

Retirement	0	0	0	0	0	0
Termination	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	1	0	0
Time and Attendance	0	0	0	0	0	0
Training	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0
Findings After Hearing						
Findings After Hearing	0	0	0	0	0	0
Appointment/Hire	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0
Awards	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0
Suspension	0	0	0	0	0	0
Removal	0	0	0	0	0	0
Other	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0
Examination Test	0	0	0	0	0	0
Harassment						
Non-Sexual	0	0	0	0	0	0
Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	0	0
Promotion Non-Selection	0	0	0	0	0	0
Reassignment						
Denied	0	0	0	0	0	0
Directed	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0
Training	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0
Findings Without Hearing						
Findings Without Hearing	0	0	0	1	0	0
Appointment/Hire	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0
Awards	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0

Disciplinary Action						
Demotion	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0
Suspension	0	0	0	0	0	0
Removal	0	0	0	0	0	0
Other	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0
Examination Test	0	0	0	0	0	0
Harassment						
Non-Sexual	0	0	0	0	0	0
Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay Including Overtime	0	0	0	0	0	0
Promotion Non-Selection	0	0	0	0	0	0
Reassignment						
Denied	0	0	0	0	0	0
Directed	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	1	0	0
Time and Attendance	0	0	0	0	0	0
Training	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status

	2016	2017	2018	2019	2020	FY2021 YTD
Total Complaints from previous Fiscal Years	34	49	41	32	25	19
Total Complainants	28	37	34	27	22	19
Number of Complaints Pending						
Investigation	0	0	0	0	0	0
ROI issued, pending Complainant's action	1	0	1	0	0	0
Hearing	31	46	36	28	25	19
Final Action	3	0	4	4	0	0
Appeal	24	11	4	11	15	7

Complaint Investigations

	2016	2017	2018	2019	2020	FY2021 YTD
Pending Complaints Where						

Investigations Exceed Required Time Frames	0	0	0	1	0	1
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Last Updated 11/01/2021

OMWI@fdic.gov

APPENDIX C

FDIC POLICIES RELATING TO ANTI-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

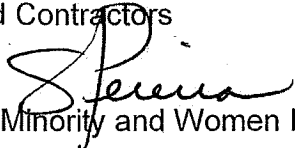
(703) 562-6225

DATE

November 20, 2015

DATE OF CANCELLATION (*Bulletins Only*)

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





FDIC DIRECTIVE

2710.03

Nikita Pearson
Director
Office of Minority and Women Inclusion

See approval(s) on Action Log

Anti-Harassment Program

The Anti-Harassment Program is implemented in accordance with the legal requirements of the applicable laws, regulations, and guidance provided by the Equal Employment Opportunity Commission (EEOC).

PURPOSE

This Directive establishes the policies regarding anti-harassment in the workplace or at FDIC-sanctioned activities and events, including those outside of the workplace. This Directive supports the FDIC's commitment to maintaining a workplace free from harassment.

SCOPE

This Directive applies to all FDIC Divisions/Offices.

AUTHORITIES

See [Appendix - Authorities](#)

FORM(S)

None.

REVISION(S)

This Directive supersedes FDIC 2710.3, Anti-Harassment Program, dated March 29, 2021.

Action Log

Submission Type <i>(New, Pedestrian Change, Revision)</i>	Date	Approved through Directives Management Center
Revision	03/29/2021	Nikita Pearson
Pedestrian Change	06/13/2021	Nikita Pearson

Summary of Changes (if applicable)

Updated to:

- Include terminology related to sexual harassment in the examples provided in the definition of harassment.
- Include Labor and Employee Relations Section (LERS) HR Specialists as points of contact to report harassment.
- Correct contact information for the Anti-Harassment Program Coordinator.
- Clearly identify the Anti-Harassment Program Coordinator roles and responsibilities.
- Include Legal Division responsibilities.
- Provide for notification to the person reporting the harassment and alleged harasser that the investigation has been completed.
- Take preventive/corrective action, as appropriate, no later than 60 days of receiving notice of a report of harassment.
- Initiate an investigation within ten calendar days of receiving the report of harassment.
- Upon approval, this Directive will be renumbered to 2710.03.

Pedestrian Change to:

- Update “gender” to “sex” in the Policy Section; and
- Update “prompt” to “immediate” in the Policy Section B.3.

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Background

The FDIC is committed to providing its employees with a workplace that is free of harassment. The Office of Minority and Women Inclusion (OMWI) Director has the delegated responsibility for the FDIC diversity and inclusion, civil rights, and minority and women outreach programs. These programs ensure the FDIC workplace is inclusive, free from unlawful discrimination and harassment, and provides equal opportunity and access to all employment and business activities.

The goal of this Directive is to provide employees with an internal process to report harassment. Employees need not assert that the harassment rises to a level prohibited by Title VII of the Civil Rights Act or other civil rights statutes, or that the harassment is based on membership in a protected class. This Directive provides examples of conduct that could constitute harassment prohibited by this Directive, and explains the rights and responsibilities of all employees and the FDIC's system of accountability for violations of this Directive.

Policy

A. General Policy

It is the policy of the FDIC to maintain a workplace free from all forms of harassment, including but not limited to harassment based on race, color, religion, sex (including sexual or nonsexual, pregnancy, gender identity, or sexual orientation), national origin, disability (physical and 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 tolerate harassment by or against any applicant, employee, or contractor. Similarly, the FDIC will not tolerate retaliation against any applicant, employee, or contractor for opposing harassment, reporting harassment, or participating or assisting in any inquiry, investigation, lawsuit, or other proceeding concerning harassment. The FDIC expects anyone who witnesses or is the alleged victim of harassment to report it immediately, consistent with the [Reporting Process](#) provided.

Harassment is any verbal or non-verbal conduct that is unwelcome to the individual and objectively offensive. For workplace harassment to be illegal, it must be either severe or pervasive, and based on a characteristic protected by a law enforced by the EEOC (e.g., Title VII of the Civil Rights Act). However, conduct need not rise to the level of illegal harassment to be prohibited by this Directive. For purposes of this Directive, this conduct will be referred to as "harassment."

The following are some examples of harassment prohibited by this Directive:

- Offensive jokes, comments, objects, or pictures.
- Unwelcome questions about a person's identity (e.g., disability status, gender identity, sexual orientation, national origin, religion).
- Undue and unwelcome attention.
- Ridicule or mockery.
- Displaying offensive objects or pictures.
- Insults or put-downs.
- Unwelcome touching or contact.
- Unwelcome sexual advances.

- Requests for sexual favors.
- Other verbal or physical harassment of a sexual nature.
- Slurs, epithets, or name-calling.
- Threats or other forms of intimidation.
- Physical or sexual assault.
- Engaging in bullying, intimidating, or threatening behavior.

To maintain a workplace free from harassment, FDIC management will take appropriate actions to address allegations of harassment made against non-employees such as staff at examination sites, contract workers, security guards, and delivery or maintenance staff.

Any FDIC employee who engages in conduct prohibited by this Directive is subject to disciplinary action, up to and including removal from Federal service.

In most cases, harassment does not include ordinary supervisory actions, such as telling an employee that they are not performing a job adequately. Generally, allegations concerning performance issues, impolite behavior, or personality conflicts will not fall under this Directive. Also, occasional and innocuous compliments generally will not constitute harassment, but rather reflect the reality of human experience and common courtesy.

This Directive is not intended to stand in isolation of other policies and tools available to remedy workplace disputes. FDIC employees involved in a workplace dispute may raise such issues through alternative means, such as the Internal Ombudsman's Office, FDIC's Alternative Dispute Resolution program, or the negotiated or administrative grievance procedures.

B. Reporting Process

1. Reporting Alleged Harassment

- a. Individuals who observe, experience, or otherwise learn about harassment covered under this Directive are expected to promptly report the conduct to any of the following:
 - 1) The alleged victim's immediate supervisor;
 - 2) The supervisor of the person responsible for the alleged conduct;
 - 3) Any management official with supervisory responsibility;

- 4) Anti-Harassment Program Coordinator (AHPC);
- 5) LERS Assistant Director; or
- 6) Any LERS Specialist.

When allegations of harassment are received, notify AHPC immediately.

- b. To fulfill the objectives of this Directive, an individual who has alleged harassment in connection with an EEO complaint, a negotiated or administrative grievance, a complaint filed with the Office of Special Counsel, or an appeal filed with the Merit Systems Protection Board, will be deemed to have reported alleged harassment under this Directive.

If employees raise allegations of harassment to the Internal Ombudsman's Office (IOO), they will be provided with a safe place to explore their concerns, advised to review this Directive, and referred to the AHPC, as appropriate. However, because of the unique role of the IOO, raising allegations of harassment with the IOO does not constitute notice to the FDIC under this policy.

2. Processing/Investigation of Allegations

- a. When the AHPC receives a report of harassment, the AHPC:
 - 1) Contacts the individual making the report to explain the investigative process and schedule an intake call to gather preliminary information about the allegations.
 - 2) Once the intake process is completed and the allegations are received, refers the matter to LERS.
 - 3) Reports allegations related to the Office of Inspector General (OIG) to OIG's Director, Office of Human Resources for appropriate action pursuant to OIG procedure.
 - 4) Notifies the appropriate contracting officer of allegations of harassment involving contract workers.
- b. LERS and Labor, Employment and Administration Section (LEAS) review the allegations to determine whether they are covered by this Directive. If so, LERS and LEAS, in consultation with the appropriate management official(s), must determine whether immediate corrective action is necessary to address the allegations. If such action is necessary, it will be effectuated as promptly as possible.

In consultation with the appropriate management official(s), LERS and LEAS determines whether additional investigation of the allegations is appropriate. If so, they initiate an investigation no later than 10 calendar days of receiving the report of harassment. All parties—including the reporting party (and the alleged victim of the alleged harassing conduct, if different from the reporting party), the alleged harasser, and any others involved—are required to cooperate with an investigation so it can be conducted in a prompt, thorough, and fair manner. A witness who fails to cooperate may be subject to disciplinary action, up to and including removal from Federal service.

The identity of the person reporting the harassment, the alleged harasser, and other witnesses interviewed in connection with an investigation under this Directive, as well as the information they provide during the investigation, are kept confidential to the extent possible. However, confidentiality cannot be guaranteed in light of the Agency's obligations to conduct a thorough and comprehensive investigation and maintain a harassment-free workplace.

An individual who reports harassment under this Directive may still pursue statutory, administrative, or collective bargaining remedies regarding an alleged act of harassment (e.g., EEO complaint). Such other remedial processes use different procedures, have different rules, requirements, and timeframes, and may provide different remedies than are available under this Directive. Reporting harassment under this Directive does not satisfy the requirements or delay the time limits or deadlines applicable for initiating or pursuing redress through other processes.

Within five business days of the conclusion of an investigation, the Fact Finder notifies the person reporting the harassment and the alleged harasser that the investigation has been completed. Such notifications are retained in the official investigative file. Consistent with the Privacy Act, information about decisions to take or not take disciplinary action generally are not disclosed.

3. Preventive/Corrective Action

The Fact Finder provides the investigative findings to the appropriate management official. In most cases, this will be the alleged harasser's immediate supervisor. However, the matter may be referred to a manager outside of the alleged harasser's chain of command. FDIC management, in consultation with LERS and LEAS, determines what, if any, action to take as a result of the findings. If harassment has

occurred, the FDIC takes immediate, appropriate action. The FDIC takes action no later than 60 calendar days of receiving notice of a report of harassment, as appropriate.

Responsibilities

A. Managers/Supervisors:

1. Do not engage in harassment or retaliatory conduct;
2. Immediately report allegations of harassment to the AHPC;
3. Participate and cooperate in the investigation process;
4. Take immediate action to stop/correct any harassment or retaliatory conduct;
5. Attend mandatory anti-harassment training;
6. Fully cooperate in an inquiry or fact-finding concerning an allegation of harassment; and
7. Comply with all applicable guidance and procedures referenced in this Directive.

B. Employees:

1. Do not engage in harassment;
2. Immediately report allegations of harassment to a management official, the AHPC, or a LERS Human Resources (HR) Specialist; and
3. Fully cooperate in an inquiry or fact-finding concerning an allegation of harassment.

C. AHPC:

1. Oversees the FDIC's Anti-Harassment Program;
2. Serves as a subject matter expert about issues related to this Directive;
3. Provides mandatory training for all managers and supervisors on how to identify and respond to incidents of harassment in the workplace;
4. Provides training for all employees about the anti-harassment policy and reporting procedures;
5. Coordinates program implementation with LERS, LEAS, and other Divisions/Offices, as appropriate;

6. Advises and provides technical assistance to managers and supervisors in preventing and addressing allegations of harassment;
7. Monitors program effectiveness by maintaining a system to track allegations and actions taken;
8. Recommends program changes for enhancement;
9. Works with other FDIC program officials to effectively prevent and eliminate harassment in the workplace through a continuing education program;
10. Develops preventive strategies based on any identified trends, and maintains relevant documents collected in the fact finding inquiry in accordance with FDIC Directive 1210.01, Records and Information Management Program;
11. Receives, gathers, and provides data required for reporting on allegations of harassment to the EEOC, other oversight agencies, or Congress; and
12. Ensures the Anti-Harassment Program policies and procedures are posted on the FDIC internal website and publicized throughout FDIC, including providing the policy and procedures to employees.

D. LERS:

1. In collaboration with LEAS, serves as Fact Finder to conduct investigations of allegations of harassment, where appropriate;
2. In collaboration with LEAS, provides advice and guidance to management on appropriate preventive or corrective action(s) to take in connection with allegations of harassment;
3. In collaboration with LEAS, notifies the AHPC when an investigation has been concluded within five business days after its completion, provides the AHPC with a summary of the findings, and identifies what, if any, corrective action was taken; and
4. Notifies the individual reporting the harassment and the alleged harasser when an investigation has been concluded within five business days after its completion.

E. LEAS:

1. In collaboration with LERS, serves as Fact Finder to conduct investigations of allegations of harassment, where appropriate;

2. In collaboration with LERS, provides advice and guidance to management on appropriate preventive or corrective action(s) to take in connection with allegations of harassment; and
3. In collaboration with LERS, notifies the AHPC when the investigation of an allegation of harassment is completed, a summary of the findings, and what, if any, corrective action was taken in connection with EEO conflict cases.

F. Contracting Officers:

Consult with the AHPC, LERS, and LEAS upon receiving an allegation of harassment from a contractor.

Appendix - Authorities

- Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 715
- Section 717, of Title VII of the Civil Rights Act of 1964, as amended, 42 United States Code (U.S.C.) § 2000e-16
- Section 501, of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791
- The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621-634
- Genetic Information Nondiscrimination Act of 2008
- The Federal Labor-Management Relations Statute; 5 U.S.C. §§ 7101-7135
- Uniformed Services Employment and Reemployment Act of 1994; 38 U.S.C. §§ 4301-4335
- Executive Order (E.O.) 11478, Equal Employment Opportunity in the Federal Government
- E.O. 13087, Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government
- E.O. 13145, To Prohibit Discrimination in Federal Employment Based on Genetic Information
- E.O. 13152, Further Amendment to Executive Order 11478, Equal Employment Opportunity in Federal Government
- E.O. 13672, Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors

Appendix - Contact Information

Employees can contact the AHPC at Anti-Harassment@fdic.gov.

Glossary of Terms

Term	Definition
Anti-Harassment Program Coordinator (AHPC)	The designated employee responsible for overseeing the implementation of the Anti-Harassment Program.
Conduct Prohibited by this Directive (“Harassment”)	<p>Verbal or non-verbal conduct which is unwelcome to the individual and objectively offensive. For workplace harassment to be illegal, it must be either severe or pervasive, and based on a characteristic protected by a law enforced by the EEOC (e.g., Title VII of the Civil Rights Act). However, conduct need not rise to the level of illegal harassment to be prohibited by this Directive. For purposes of this Directive, this conduct will be referred to as “harassment.”</p> <p>The following are some examples of harassment prohibited by this Directive:</p> <ul style="list-style-type: none"> ▪ Offensive jokes, comments, objects, or pictures. ▪ Unwelcome questions about a person’s identity (e.g., disability status, gender identity, sexual orientation, national origin, religion). ▪ Undue and unwelcome attention. ▪ Ridicule or mockery. ▪ Displaying offensive objects or pictures. ▪ Insults or put-downs. ▪ Unwelcome touching or contact. ▪ Unwelcome sexual advances. ▪ Requests for sexual favors. ▪ Other verbal or physical harassment of a sexual nature. ▪ Slurs, epithets, or name-calling.

Term	Definition
	<ul style="list-style-type: none"> ▪ Threats or other forms of intimidation. ▪ Physical or sexual assault. ▪ Engaging in bullying, intimidating, or threatening behavior.
Fact Finder	<p>An individual assigned to conduct a prompt, independent, thorough, and impartial investigation into alleged harassment. The Fact Finder generally will be a Human Resources Specialist in LERS, but a Fact Finder may also be another appropriate official depending on the circumstances, e.g., conflict of interest situations.</p>

Glossary of Acronyms

Acronym	Definition
AHPC	Anti-Harassment Program Coordinator
EEOC	Equal Employment Opportunity Commission
LEAS	Labor, Employment and Administration Section (Legal Division)
LERS	Labor and Employee Relations Section (Division of Administration)
OIG	Office of Inspector General
OMWI	Office of Minority and Women Inclusion

APPENDIX C-3

CIRCULAR 2400.2 – Whistleblower Protection Rights





FDIC DIRECTIVE

2400.2

Arleas Upton Kea
Deputy to the Chairman and Chief Operating Officer

See approval(s) on Action Log

Whistleblower Protection Rights

PURPOSE

To inform employees of their rights and remedies under federal whistleblower protection laws.

SCOPE

This Directive applies to all current and former FDIC employees and applicants for employment at the FDIC.

AUTHORITIES

- Civil Service Reform Act, Pub. L. No. 95-454, 92 Stat. 1111;
- Depository Institution Employee Protection Remedy (12 U.S.C. 1831j);
- Inspector General Act, as amended (5 U.S.C. Appendix 3, §§ 3(d), 7); and
- The Whistleblower Protection Act and the Whistleblower Protection Enhancement Act (5 U.S.C. 2302(b)(8)-(9)).

FORM(S)

None

REVISION(S)

This Directive supersedes FDIC Circular 2400.1, Whistleblower Protection Rights, dated June 6, 2001.

Action Log

Submission Type <i>(New, Pedestrian Change, Revision)</i>	Date	Approved through Directives Management Center
Revision	07/16/2019	Arleas Upton Kea

Summary of Changes (if applicable)

This Directive has been updated to conform to the standard template and reflect updates by federal law.

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Background

The Whistleblower Protection Act and the Whistleblower Protection Enhancement Act (5 U.S.C. §§ 2302(b)(8)-(9)) protect federal employees and applicants for employment from retaliatory action or reprisal for whistleblowing and for engaging in certain protected activities.

The Depository Institution Employee Protection Remedy (12 U.S.C. § 1831j) addresses reprisal for whistleblowing activities and is subject to the procedures of the Civil Service Reform Act, Pub. L. No. 95-454, 92 Stat. 1111.

The Inspector General Act, as amended (5 U.S.C. Appendix 3, §§ 3(d), 7) prohibits reprisal against any employee for making a complaint or disclosing information to an Inspector General (IG) and requires each federal agency to designate a Whistleblower Protection Coordinator, located in the agency's Office of Inspector General (OIG).

Policy

A. Whistleblower Protection Act and Whistleblower Protection Enhancement Act (5 U.S.C. §§ 2302(b)(8)-(9))

1. Whistleblower Protection Act

Under the Whistleblower Protection Act, a federal official or employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take or fail to take, or threaten to take or 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. Disclosures prohibited by law or required to be kept secret under Executive Order may lawfully be made to Congress, the Office of Special Counsel (OSC), the FDIC IG, or a person designated by the Agency Head to receive such a disclosure. The designee for the FDIC is the Division of Administration (DOA)/Labor and Employee Relations Section (LERS) Assistant Director.

2. Whistleblower Protection Enhancement Act

Under the Whistleblower Protection Enhancement Act, a federal official or employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because that employee or applicant filed a complaint, grievance, or appeal alleging retaliation for whistleblowing; for testifying or lawfully assisting any individual with a complaint, appeal, or grievance right; for cooperating with or disclosing information to the IG or the OSC in accordance with the law; or for refusing to obey an order that would require the individual to violate law, rule, or regulation.

B. Depository Institution Employee Protection Remedy (12 U.S.C. § 1831j)

Subject to the Civil Service Reform Act, 12 U.S.C. § 1831j states an employee of a federal banking agency (including the FDIC) 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, Federal Home Loan Bank, Federal Reserve 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 or safety by a depository institution or any federal agency or Federal Home Loan Bank, Federal Reserve Bank, any director, officer, or employee of any depository institution or any Federal Home Loan Bank or Federal Reserve Bank, or any officer or employee of the FDIC.

C. Inspector General Act, as amended (5 U.S.C. Appendix 3, §§ 3, 7)

Under the Inspector General Act, any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an IG, unless the complaint was made or the information was disclosed with the knowledge it was false or with willful disregard for its truth or falsity.

Responsibilities

A. LERS Assistant Director

The LERS Assistant Director is designated as the FDIC official to receive disclosures otherwise prohibited by law or required to be kept secret under Executive Order.

B. Whistleblower Protection Coordinator

The Whistleblower Protection Coordinator is designated by the IG to perform the following functions:

1. Educates employees about prohibitions on retaliation for protected disclosures;
2. Educates employees who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures;
3. Informs employees about the means by which they may seek review of any allegation of reprisal for whistleblowing, as well as general information about the timeliness of such cases, the availability of any alternative dispute mechanisms, and avenues for potential relief;
4. Assists the IG in promoting the timely and appropriate handling and consideration of protected disclosures and allegations of reprisal, to the extent practicable, by the IG; and
5. Does not act as a legal representative, agent, or advocate of the employee or former employee.

C. Employees/Applicants

It is the responsibility of each employee of the FDIC to be familiar with the content of this Directive and to understand his/her Whistleblower Protection Rights, and encourage an environment that allows protected disclosures to be made and received without retaliation or the threat of retaliation.

An individual who believes he or she was subjected to a covered personnel action in retaliation for whistleblowing or other protected activity may elect one of three remedies listed below:

1. An appeal to the Merit Systems Protection Board (MSPB) if the covered personnel action is appealable to the Board;
2. A negotiated grievance if the individual is in the bargaining unit; or
3. A complaint filed with the OSC for investigation, if the covered personnel action is not appealable to the Board. An employee may file an individual appeal with the MSPB after the OSC completes the investigation.

An individual's election is made when an individual files one of the three actions listed above.

Appendix – Additional Information

Questions regarding Whistleblower Protection Rights or filing procedures should be directed to the:

1. Whistleblower Protection Coordinator in the OIG, at OIG Hotline
attn.: Whistleblower Protection Coordinator
1-800-964-FDIC
ighotline@fdicoig.gov;
2. Applicable Headquarters or Regional Labor and Employee Relations representative
(DOA Home > Human Resources > Labor & Employee Relations > Contacts); or
3. FDICnet at DOA Home > Human Resources > Whistleblowers.

Individuals also may contact the OSC at (800) 872-9855 or visit <https://osc.gov> for information regarding whistleblower disclosures and/or procedures for filing a complaint with the OSC.

Glossary of Terms

Term	Definition
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.
Whistleblowing	When a Federal employee or applicant for employment discloses information which the individual reasonably believes evidences: <ul style="list-style-type: none"><li data-bbox="755 850 1274 892">▪ A violation of law, rule, or regulation;<li data-bbox="755 913 1112 955">▪ Gross mismanagement;<li data-bbox="755 976 1112 1018">▪ A gross waste of funds;<li data-bbox="755 1039 1128 1081">▪ An abuse of authority; or<li data-bbox="755 1102 1356 1165">▪ A substantial and specific danger to public health or safety.

Glossary of Acronyms

Acronym	Definition
DOA	Division of Administration
IG	Inspector General
LERS	Labor and Employee Relations Section
MSPB	Merit Systems Protection Board
OIG	Office of Inspector General
OSC	Office of Special Counsel

APPENDIX C-4

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 (*Bulletins Only*)

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.