FISCAL YEAR 2019

No FEAR Act

ANNUAL REPORT TO CONGRESS

Federal Deposit Insurance Corporation

FDIC

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INTRODUCTION

The Federal Deposit Insurance Corporation (FDIC or Agency) is hereby pleased to present its "Annual Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) Report to Congress for Fiscal Year 2019," in accordance with Title II, Section 203 of the No FEAR Act, Public Law 107-174. This No FEAR Act annual report covers Fiscal Year (FY) 2019. This report summarizes the FDIC's activities to ensure accountability for antidiscrimination and whistleblower laws related to employment.

The FDIC is an independent agency established by Congress in 1933 to maintain stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large and complex financial institutions resolvable, and managing receiverships.

The FDIC's Office of Minority and Women Inclusion (OMWI) has been delegated overall responsibility for diversity and inclusion, civil rights, and minority and women outreach programs. OMWI works to ensure that the U.S. Equal Employment Opportunity Commission's (EEOC) six essential elements of a model EEO Program are incorporated into the fabric of the FDIC. OMWI's Equal Opportunity Compliance and Training Branch (EOCTB) is responsible for ensuring that the FDIC complies with all federal EEO laws and related civil rights protections; provides a neutral forum for the discussion, investigation, and resolution of EEO matters; provides agency guidance and standards for establishing and maintaining effective Equal Opportunity programs; provides policy and technical assistance on EEO and civil rights to the FDIC senior leadership and supervisors; and manages the FDIC's EEO complaint process pursuant to 29 C.F.R. Part 1614.

The FDIC fully engages the talents and competencies of employees through its Agency-wide Chairman's Diversity Advisory Council (CDAC) that provides advice to the FDIC Chairman, through the Director of the OMWI and the Diversity and Inclusion Executive Advisory Council (D&I EAC), on diversity and inclusion issues and concerns. The CDAC is committed to identifying and adopting best practices to promote a diverse and inclusive workforce in an effort to identify and remove barriers to equal employment opportunities, consistent with merit system principles and other applicable laws and regulations. Also, the CDAC assists and works with OMWI in sponsoring programs that address diversity and that are reflective of the diversity of the FDIC's workforce; and provide a means by which employees may communicate their broad-based diversity concerns and issues to management, thus supporting EEOC's six essential elements of a model EEO program.

The FDIC also engages with and leverages its Employee Resource Groups (ERGs). The ERGs help provide employees with a supportive work environment that encourages networking and collaborating on career management and personal development issues. The ERGs are vital to the FDIC's ability to create and maintain a culture and environment that recognizes, encourages, and utilizes the talents, skills, and perspective of all employees in order to achieve the FDIC's mission.

PURPOSE OF REPORT

The No FEAR Act (Pub. L. No. 107-174) is intended to reduce workplace discrimination within the Federal Government by holding federal agencies accountable for violations of antidiscrimination and whistleblower protection laws. Section 203 of the No FEAR Act requires that, no later than 180 days after the end of each fiscal year, the FDIC submit an annual report to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the EEOC, and the Attorney General of the United States. Regulations from OPM implementing the No FEAR Act, 5 CFR, Part 724, Subpart C, also require the submission of this annual report to the Director of OPM.

The Annual No FEAR Act Report must provide the following information:

- The number, status, and disposition of Federal court cases, pending or resolved, arising under the laws covered by the No FEAR Act;
- Judgment Fund reimbursements and adjustments to the FDIC budget to meet reimbursement requirements;
- The number and type of disciplinary actions related to discrimination, retaliation, or harassment and the FDIC's policy relating to appropriate disciplinary action;
- Final year-end summary data related to the FDIC's EEO complaint activity for the fiscal year;
- An analysis of trends, causation, and practical knowledge gained through experience;
- Actions planned or taken to improve the FDIC's discrimination complaint program; and
- The agency's No FEAR Act training plan.

BACKGROUND

OMWI is responsible for administering and ensuring agency compliance with Federal EEO laws, regulations, policies, and guidance that prohibit discrimination in the Federal workplace. OMWI is also responsible for preparing the FDIC's annual No FEAR Act report. The FDIC's Office of Inspector General (OIG), the Division of Administration (DOA), and the Legal Division also play a role in implementing the No FEAR Act for FDIC employees.

The laws covered in the No FEAR Act include:

- Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e-16 (race, color, religion, sex, national origin, and reprisal)
- The Age Discrimination in Employment Act of 1967, *as amended*, 29 U.S.C. § 633a (age (40 and over) and reprisal)
- The Equal Pay Act of 1963, *as amended*, 29 U.S.C. § 206(d) (sex-based wage differentials and reprisal)
- Section 501 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 791 (physical and mental disabilities and reprisal)
- The Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff *et seq.* (genetic information about an individual or individual's family members and reprisal)
- The Civil Service Reform Act of 1978, 5 U.S.C. § 2302(b) and (d) (prohibited personnel practices, and race, color, religion, sex, national origin, age, disability, marital status, political affiliation, and whistleblowing)

NO FEAR ACT DATA ANALYSIS

EEO Complaint Activity in Federal Court and Disposition

There has been a slight uptick in new federal cases filed in FY 2019 as compared to FY 2018, but the number remains at a very low level. Detailed court case data for FY 2019 can be found in Appendix B1.

Fiscal Year	2015	2016	2017	2018	2019
Pending District Court Cases	6	13	9	3	3
Pending Appellate Court Cases	1	2	4	2	1
New Cases Filed in District Court	5	7	2	0	2
Settlements	0	1	1	1	1
Withdrawals	1	1	1	0	0
Final Judgment for Complainant	0	0	0	0	0
Final Judgment for Agency	0	5	4	2	1

Judgment Fund Reimbursements and Budget Adjustment

The Judgement Fund was established to pay court judgments and Justice Department settlements of actual or imminent lawsuits against the government. It is a permanent, indefinite appropriation and is administered by the Judgment Fund Branch, which is part of the U.S. Department of the Treasury. The No FEAR Act requires federal agencies to reimburse the Judgment Fund for personnel discrimination payments made in accordance with 28 U.S.C. §§ 2414, 2317, 2672, or 2677.

The FDIC is an independent agency, and with the exception of the FDIC's OIG, is not appropriated by Congress. There were no judgments against the FDIC, including the OIG, from cases pending or resolved in federal district court in FY 2019. Therefore, no budget adjustments were necessary.

Number of Employees Disciplined

Section 203(a)(4) of the No FEAR Act requires that Federal agencies include in the annual report to Congress the number of disciplinary actions taken for conduct inconsistent with Federal anti-discrimination and whistleblower protections. For Federal Court cases involving allegations of a violation of antidiscrimination or whistleblower protection laws, 5 C.F.R. 724.302 (a)(3) requires the agency to report the number of employees disciplined. 5 C.F.R. 724.102 defines discipline to include any one, or a combination, of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal. The regulation also provides that irrespective of discrimination cases in Federal court, Federal agencies are to report the total number of employees disciplined and the specific nature of the disciplinary action taken in accordance with FDIC policy that prescribes disciplinary action for discrimination, retaliation, or harassment conduct, and whistleblower protection law violations.

During the reporting period, there were no findings of discrimination issued by the EEOC, the Merit Systems Protection Board, the Office of Special Counsel, or a Federal court. There was one finding of discrimination issued by a Final Agency Decision. The finding involved a per se violation of the confidentiality provisions of Section 501 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 791.

The FDIC allows for harassment claims to be raised through its Anti-Harassment Program. These claims are reviewed and resolved in an accelerated process by OMWI, the Labor and Employee Relations (LER) office of the Division of Administration, and the Legal Division. In FY 2019, there were 15 complaints involving allegations of harassment raised through the Anti-Harassment Program. Of the 15 complaints, one inquiry resulted in additional training, and one is pending management action.

Discipline Policy

Section 203(a)(4) of the No FEAR Act requires that Federal agencies include in the annual report to Congress a detailed description of the policy implemented by the Agency relating to disciplinary actions imposed against a Federal employee who discriminated against any individual in violation of any of the laws cited under section 201(a)(1) or (2), or who committed another prohibited personnel practice that was revealed in the investigation of a complaint claiming a violation of any of the laws cited under section 201(a)(1) or (2).

To help prevent discrimination and inform managers, supervisors, and employees of the consequences for committing acts of discrimination, the FDIC has promulgated and enforces EEO and antidiscrimination and whistleblower policies and procedures applicable to all its employees and applicants for employment on its internal and external websites. These policies outline employee rights and responsibilities. Managers and supervisors share the responsibility for successful implementation of these policies. The OMWI Director, in coordination with LER and the Legal Division, regularly reviews these policies and procedures to ensure that they are up-to-date, legally sufficient, well communicated, applied consistently, and implemented fairly.

The FDIC has in place an Equal Opportunity Policy, Circular 2710.1 (Appendix C-1), which is accessible on the Agency's internal and external webpages. The Chairman issues an annual EEO Policy Statement (Appendix A) as required by the EEOC. Also, OMWI staff distributes information regarding diversity and inclusion and the Agency's EEO Program to all new employees during the New Employee Orientation training. The EEO policy explains the EEO process, including how to begin the process, pertinent regulatory timeframes, and the roles and responsibilities of various offices. This policy also makes clear that discrimination, harassment, and retaliation will not be tolerated at the FDIC. The FDIC EEO poster contains information about the EEO complaint process and EEO Counselor contact information and is posted on employee bulletin boards throughout the Agency's headquarters, regional, and field offices.

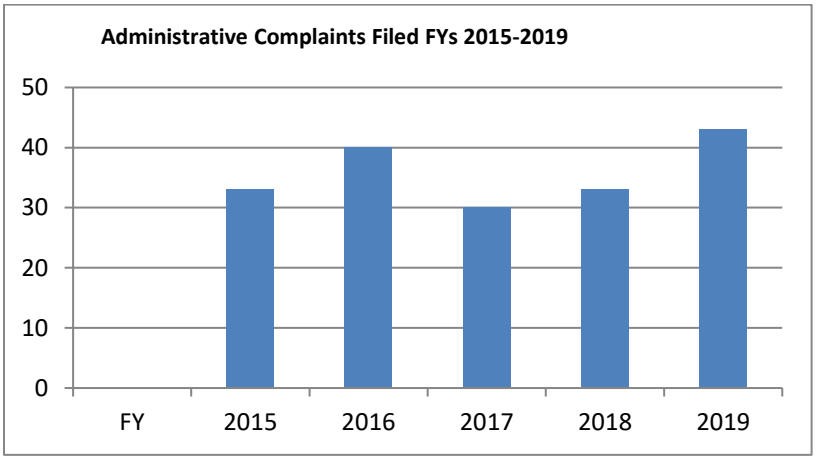
The FDIC's Anti-Harassment Program policy and procedures define harassment and inappropriate conduct, and make clear that all forms of harassment and/or inappropriate conduct, and retaliation will not be tolerated at the FDIC. To ensure as inclusive a workplace as possible, this policy is purposefully broad. It identifies multiple avenues of redress for claims of harassment, and does not limit employees to the EEO process.

Trends and Causal Analysis of Administrative EEO Complaint Activity

This report primarily focuses on FY 2019, but also includes the five-year reporting period between FY 2015 and FY 2019.

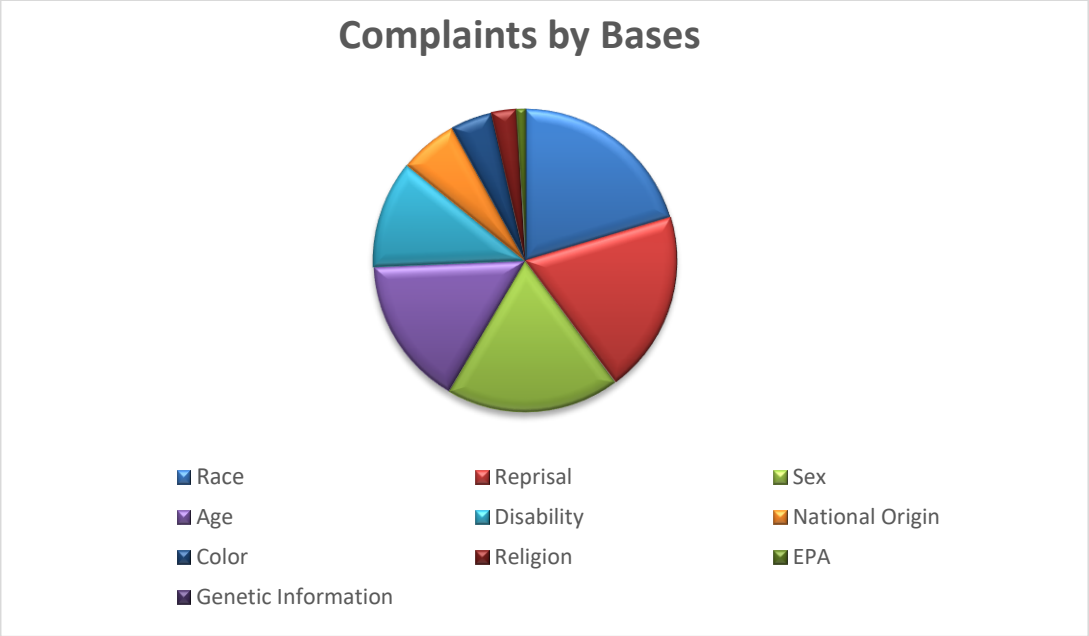
Complaint Activity

There were 43 formal EEO complaints filed in FY 2019. This represents a 30 percent increase in complaint activity compared to the 33 EEO complaints filed in FY 2018. The complaint activity fluctuated throughout the past five fiscal years, ranging from 33 in 2015 to 43 in 2019, which was the highest number during the five-year reporting period.
In FY 2019, of the 43 complaints filed, race (23), reprisal (22), and sex (21) were the most frequently filed bases. The most frequently raised issues were non-sexual harassment (14), promotion/non-selection (12), and terms and conditions of employment (14). Detailed administrative EEO complaint data can be found at Appendix B2.



Complaints by Basis

In FY 2019, there were 23 complaints filed on the basis of race in comparison to 14 complaints filed in FY 2018, an increase of 64 percent. For the basis of reprisal, there were 22 complaints filed in FY 2019 in comparison to 21 filed in FY 2018, an increase of 4 percent. Of the most frequently filed bases, sex reflected the most significant increase this reporting period. In FY 2019, there were 21 complaints filed on the basis of sex in comparison to 10 filed in FY 2018, an increase of 110 percent. All of the bases reflect an increase in FY 2019, with the exception of disability which reflects a 13 percent decrease from FY 2018 (15 in FY 2018 compared to 13 in FY 2019); and genetic information which reflects no change (0 in FY 2018 and 0 in FY 2019).



Complaints by Issue

In FY 2019, there were 14 claims of non-sexual harassment in comparison to 12 claims in FY 2018, an increase of 16 percent. For claims alleging denial of promotion/non-selection, there were 12 claims filed in FY 2019 in comparison to 10 claims filed in FY 2018, an increase of 20 percent. Of the most frequently filed issues, terms and conditions of employment reflected the most significant increase this reporting period. In FY 2019 there were 14 claims of terms and conditions of employment in comparison to 8 in FY 2018, an increase of 75 percent.

Overall, there is no distinct underlying cause that is readily apparent regarding the increase in complaints in FY 2019. From reviewing the complaint allegations for the last five years, the FDIC must focus its attention on training in the areas of reprisal, race, sex, age, and harassment. Complaints in these areas have consistently been the most filed allegations.

The FDIC will continue to monitor its complaint activity compared to government-wide activity and activity of agencies most similar to the FDIC.

Practical Knowledge Gained through Experience

The FDIC's commitment to its talented and diverse employees enabled the Agency to maintain a ranking in the top five midsize agencies of the "Best Places to Work" in the federal government report for the tenth consecutive year. In 2019, the FDIC ranked No. 4 among midsize agencies, up one spot from 2018.

The FDIC takes continual action to heighten employee and management awareness of how EEO issues arise in the workplace with the hope that greater understanding and increased communication will lead to fewer complaints of employment discrimination. In FY 2019, OWMI, in conjunction with the FDIC's Corporate University, successfully provided EEO and Diversity, and mandatory No FEAR Act training to managers and employees nationwide on a variety of EEO subjects, including agency non-discrimination policies, unconscious bias, reasonable accommodation, and Alternative Dispute Resolution (ADR).

The CDACs also assisted and worked with OMWI to sponsor programs that address cultural diversity and promote initiatives that acknowledge and recognize the benefits of the diverse heritages and cultures that exist throughout the corporation. The CDACs held a combined total of 65 events (through September 30, 2019) on a variety of diversity and inclusion topics, including but not limited to: nationally recognized observance months, "Generational Diversity in the Workplace", "Supporting Transgender Rights", disability awareness, unconscious bias, and inclusiveness. As previously noted, the FDIC Chairman and senior leadership have supported the CDACs' initiatives.

Actions Taken/Planned to Improve Complaint or Civil Rights Programs Pursuant to Section 203 (a)(7)(D)

During FY 2019, all personnel responsible for managing the EEO complaint process received EEOC mandatory annual refresher training (EEO Counseling and Investigations), and relevant legal updates and guidance. The EOCTB Branch Chief and EEO Specialists participated as subject matter experts in the EEO and Diversity training for managers and supervisors.

The FDIC is reviewing its Anti-Harassment policy and procedures and expects to revise the current policy and provide training after the review is completed.

The FDIC is committed to providing the support, services, and resources necessary to ensure that employees with disabilities can successfully perform their job duties, and to be a model employer of individuals with disabilities. In FY 2017, the FDIC issued its first Disability Employment Program Strategic Plan, and commenced its initiative to have employees confidentially self-identify whether they have a disability.

As a result of the self-identification initiative, the FDIC saw an increase in its workforce representation of individuals with disabilities and targeted disabilities between FY 2017 and FY 2019. The FDIC is just marginally below the 12 percent federal goal for individuals with disabilities and above the 2 percent goal for individuals with targeted disabilities. In FY 2019, the percentage of individuals with disabilities agency-wide stood at 11.95 percent, compared to 11.57 percent in FY 2018, and the percentage of individuals with targeted disabilities agency-wide stood at 2.35 percent, compared to 2.25 percent in FY 2018.

The FDIC has in place a reasonable accommodation policy, approved by the EEOC in 2019, to ensure that applicants and employees know of their right under the Rehabilitation Act to receive a reasonable accommodation for disability-related limitations if needed to apply for a FDIC position, perform the essential functions of a job, or enjoy equal benefits and privileges of employment at the FDIC. OMWI ensures that the policy and procedures are well communicated, applied consistently, and implemented fairly.

OMWI initiated the process of updating its Diversity and Inclusion Strategic Plan in FY 2019. The updated plan is designed to position diversity and inclusion as an organizational core asset. It includes embedding diversity and inclusion into the agency's policies, practices, and procedures, aligning with business goals, and increasing management accountability at all levels, thus supporting EEOC's six elements of a model EEO program.

Actions Taken During FY 2019

- Administered the No FEAR Act computer based training to all managers, supervisors, and employees.
- Finalized revised Reasonable Accommodation Policy and Procedures.
- Trained managers and supervisors on leadership, management principles, communication techniques, legal compliance, and fostering diversity and inclusion.
- Briefed senior leadership on the state of the EEO program to reaffirm support for the program, and provide awareness of issues and trends.
- Finalized Personal Identifiable Information (PII) procedures within the EEO process to ensure the mitigation of risk associated with the handling of sensitive information.
- Ensured that employees, management officials, and persons with settlement authority understand the purpose and value of ADR.
- Updated OMWI's external webpage.

Planned Actions to Improve Civil Rights Program

- Collaborate with the Division of Administration to ensure that FDIC management is accountable for the success of the EEO program through transparency, by

developing measurable EEO, diversity, and inclusion goals and objectives that are incorporated into the performance assessment of supervisors and managers.
- Conduct training to increase employees', managers', and supervisors' awareness of how to prevent sexual harassment in the workplace.
- Revise the Anti-Harassment Program procedures.
- Make EEO-related information available through the use of various media, including electronic media, informational brochures, and individual and group training.

FDIC No FEAR Act Training Plan

The FDIC has placed on its Corporate University (CU) Learning Management System the "No FEAR Act" training course to carry out the requirements of the No FEAR Act training plan. The on-line training course provides instruction on all topics required by the No FEAR Act, and satisfies the initial and biennial training requirements of the No FEAR Act. A global message is issued to all employees announcing the beginning of the biennial training cycle and mandates that all FDIC employees must accomplish training within 120-days of the biennial training cycle. During the FY 2018-2019 training cycle, 98 percent of the FDIC workforce completed the mandatory training.

In FY 2019, OMWI participated in the new employee orientation to ensure all employees are aware of their EEO rights and responsibilities, are familiar with the OMWI staff, and are knowledgeable about resources for EEO information. New FDIC employees are advised during the new employee orientation program of the requirement to complete the No FEAR Act training within 90 days of hire. OMWI continues to work with Human Resources to ensure that all new employees receive the mandatory No FEAR Act training.

For the next biennial training cycle, OMWI will collaborate with CU to redesign the No FEAR Act on-line training to include any No FEAR Act updates, and provide additional EEO information focusing on noted complaint trends.

APPENDIX A

CHAIRMAN EEO POLICY STATEMENT

FDIC

EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

November 5, 2019

The FDIC's greatest asset is its employees, with their subject matter expertise and dedication to the agency's vital mission.

I am proud to reaffirm my commitment to the principles of equal opportunity, non-discrimination, diversity and inclusion, and equal access for all individuals across all our activities.

As an agency, we must ensure equal opportunity for all employees and applicants for employment regardless of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age, genetic information, and status as a parent. These protections extend to all management practices and decisions, including recruitment and hiring, appraisals, promotions, transfers, reassignments, training and career development, benefits, separation, and retention efforts.

We are also committed to a fair and level playing field for all. As such, the FDIC provides reasonable accommodations to employees and applicants with disabilities, and for religious observances and practices.

The FDIC does not tolerate discrimination, harassment (including sexual harassment), or retaliation. Every allegation of these unlawful behaviors is taken seriously. Managers and supervisors will address harassment allegations immediately and appropriately. Retaliation against individuals for participating in the EEO complaint process or opposing discriminatory practices is prohibited.

We will continue to work together to cultivate an FDIC that is accessible, inclusive, and diverse—treating everyone with dignity and respect, while embracing 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.

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 2019
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	3
Pending Appellate Court Cases	1
New Cases Filed in District Court	2

	ALLEGING A VIOLATION OF								
	Antidiscrimination Laws						Whistleblower 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 FY019	0	0	0	0	1	0	2	0	0
Still pending at end of FY2019	0	0	0	0	0	1	1	0	0
2. Disposition of Cases (including dismissals)									
Settlements	0	0	0	0	0	0	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	0	0	0	1	0	1	0	0
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

APPENDIX B2

EEO DATA POSTED PURSUANT to the No FEAR Act

Appendix B-2: Summary of Complaint Data
Equal Employment Opportunity Data Posted
Pursuant to the No FEAR Act EEO Data
Data as of 09-30-2019

Complaint Activity	2014	2015	2016	2017	2018	FY2019 YTD
Number of Complaints Filed	47	33	40	30	33	43
Number of Complainants	40	29	34	28	30	39
Repeat Filers	6	4	4	2	3	3
Complaints by Basis						
Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.	**2014**	**2015**	**2016**	**2017**	**2018**	**FY2019 YTD**
Race	25	17	23	17	14	23
Color	8	6	11	3	2	5
Religion	1	1	3	0	0	3
Reprisal	29	18	18	14	21	22
Sex	27	15	20	17	12	21
PDA	0	0	1	1	0	0
National Origin	6	7	9	3	2	7
Equal Pay Act	1	0	0	3	0	1
Age	17	12	24	10	12	18
Disability	18	10	10	12	15	13
Genetic Information	1	1	0	0	0	0
Non-EEO	9	5	4	3	0	3
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.	**2014**	**2015**	**2016**	**2017**	**2018**	**FY2019 YTD**
Appointment/Hire	7	4	8	3	3	3
Assignment of Duties	14	6	6	5	4	7
Awards	3	2	1	0	2	1
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action						
Demotion	0	0	0	0	2	1
Warning	0	0	0	4	7	2
Reprimand	1	0	0	1	1	0
Removal	5	0	0	0	1	4

Suspension	1	3	0	1	1	1
Other	4	4	8	2	0	0
Duty Hours	0	0	0	0	0	1
Evaluation Appraisal	16	9	8	10	12	10
Examination Test	1	1	1	0	0	0
Harassment						
Non-Sexual	14	8	13	15	12	14
Sexual	3	0	0	1	3	1
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	4	3	2	3	0	3
Promotion Non-Selection	11	7	11	7	10	12
Reassignment						
Denied	2	4	1	0	2	2
Directed	1	1	1	2	1	0
Reasonable Accommodation	4	2	2	4	5	3
Reinstatement	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0
Retirement	0	0	0	0	1	0
Sex Stereotyping	0	0	0	0	0	0
Telework	0	0	0	4	5	4
Termination	9	4	2	3	2	4
Terms/Conditions of Employment	4	4	2	8	8	14
Time and Attendance	8	2	6	9	8	7
Training	5	1	2	4	5	3
Other	11	9	8	2	0	0

Processing Time						
	2014	**2015**	**2015**	**2017**	**2018**	**FY2019 YTD**
Complaints pending during fiscal year						
Average number of days in investigation	220	178	179	197	187	201
Average number of days in final action	41	45	40	38	32	36
Complaints pending during fiscal year where hearing was requested						
Average number of days in investigation	219	190	193	213	195	202
Average number of days in final action	27	33	34	11	27	22
Complaints pending during fiscal year where hearing was not requested						

Average number of days in investigation	222	148	172	173	165	197
Average number of days in final action	70	48	45	48	39	67

Complaints Dismissed by Agency						
	2014	**2015**	**2016**	**2017**	**2018**	**FY2019 YTD**
Total Complaints Dismissed by Agency	8	6	3	8	2	3
Average Days pending prior to dismissal	75	96	517	360	128	103

Complaints Withdrawn by Complainants						
	2014	**2015**	**2016**	**2017**	**2018**	**FY2019 YTD**
Total Withdrawn by Complainants	2	2	3	0	8	0

Total Final Actions Finding Discrimination						
	2014	**2015**	**2016**	**2017**	**2018**	**FY2019 YTD**
Total Number of Findings	0	1	0	0	0	1
Without Hearing	0	0	0	0	0	1
With Hearing	0	1(100%)	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.	**2014**	**2015**	**2015**	**2017**	**2018**	**FY2019 YTD**
Total Number of Findings	0	1	0	0	0	1
Race	0	0	0	0	0	0
Color	0	0	0	0	0	0
Religion	0	0	0	0	0	0
Reprisal	0	1(100%)	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	1
Genetic Information	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0
Findings After Hearing	0	1	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	1(100%)	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	0	0	0	0	0	1
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	1
Genetic Information	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue

	2014	2015	2016	2017	2018	FY2019 YTD
Total Number of Findings	0	1(100%)	0	0	0	1
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	1(100%)	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	1
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	0	1	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	1(100%)	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	0	0	0	0	0	1
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	1
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						
	2014	**2015**	**2016**	**2017**	**2018**	**FY2019 YTD**
Total Complaints from previous Fiscal Years	34	41	34	49	41	32
Total Complainants	33	35	28	37	34	27
Number of Complaints Pending						
Investigation	0	0	0	0	0	0
ROI issued, pending Complainant's action	0	0	1	0	1	0
Hearing	32	41	31	46	36	28
Final Action	1	0	3	0	4	4
Appeal	8	14	24	11	4	11
Complaint Investigations						
	2014	**2015**	**2016**	**2017**	**2018**	**FY2019 YTD**
Pending Complaints Where Investigations Exceed Required Time Frames	0	0	0	0	0	1

APPENDIX C

FDIC POLICIES RELATING TO ANTI-DISCRIMINATION

APPENDIX C-1

CIRCULAR 2710.1 – Equal Opportunity Policy

FDIC

FEDERAL DEPOSIT INSURANCE CORPORATION

DIRECTIVE SYSTEM

TYPE AND NUMBER	
Circular 2710.1	
CONTACT	TELEPHONE NUMBER
Melodee Brooks	(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.

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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.

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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.

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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.

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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

FEDERAL DEPOSIT INSURANCE CORPORATION

DIRECTIVE SYSTEM

TYPE AND NUMBER	
Circular 2710.3	
CONTACT	TELEPHONE NUMBER
Melodee Brooks	(703) 562-6225
DATE	
December 8, 2015	
DATE OF CANCELLATION *(Bulletins Only)*	

TO: All Employees and Contractors

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

SUBJECT: Anti-Harassment Program

1. Purpose

To document the Federal Deposit Insurance Corporation's (FDIC) Anti-Harassment Program and outline the requirements for FDIC employees to report allegations of harassment. To describe managers' and supervisors' responsibilities to maintain a harassment-free workplace and to take prompt and effective action when allegations of harassment arise. Also, to identify roles and responsibilities for the coordination of anti-harassment efforts at FDIC, and provide guidance and instruction to FDIC supervisors and managers on receiving, coordinating, reviewing, processing, and resolving allegations of unlawful harassment.

It is important that all employees understand FDIC's policy prohibiting harassment and take all steps within their power to ensure that this form of discrimination does not exist in the FDIC.

2. Revision

FDIC Circular 2710.3, FDIC's Anti-Harassment Program, dated February 4, 2015, is hereby revised and superseded.

3. Scope

The Anti-Harassment Program applies to all employees and covers harassment between supervisors and subordinates, between employees, by employees conducting business for the FDIC outside the workplace, and non-employees while conducting business in the FDIC's workplace.

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

4. Background

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

5. Definitions

Terms used in this Circular are defined below:

a. **Anti-Harassment Program Coordinator**. The designated OMWI employee who is responsible for overseeing the implementation of the Anti-Harassment Program.

b. **Fact-Finder**. An individual who may be assigned by the Division of Administration (DOA), Human Resources Branch (HRB), Labor and Employee Relations Section (LERS), to conduct a prompt, independent, thorough, and impartial investigation into an alleged harassment.

c. **Harassment/Harassing Conduct**. Whether in violation of federal law or regulation, is defined as unwelcome verbal or physical misconduct. Examples of harassing conduct prohibited by the Anti-Harassment Program may include, but are not limited to, the following:

(1) Threatening that rejection of sexual overtures will affect assignments, appointments, promotions, transfers, or evaluations;

(2) Belittling caricatures or objects depicting persons of a particular race, national origin, religion, or other protected class;

(3) Telling derogatory religious, racial, or ethnic jokes or stories;

(4) Teasing, mimicking, or repeatedly commenting on an individual's disability, accent, or other protected class;

(5) Making offensive comments, jokes, or suggestions about an employee's gender;

(6) Making obscene or lewd comments, slurs, jokes, epithets, suggestions, or gestures;

Definitions (cont.)

(7) Commenting repeatedly on an employee's body or sexual characteristics;

(8) Displaying nude or sexually suggestive objects, pictures, images, or cartoons;

(9) Continuing prohibited behavior after a co-worker has objected;

(10) Laughing at, ignoring, or retaliating against an employee who raises a harassment allegation; or

(11) Engaging in bullying, intimidating, or threatening behavior with respect to an individual's protected class.

d. **Protected Class**. An individual's membership in a group characterized by race, color, religion, sex (including pregnancy, equal pay, gender identity and sexual orientation), national origin, disability, age, genetic information, status as a parent, or participation in protected activity under anti-discrimination statutes or Executive Orders.

e. **Unlawful Harassment/Hostile Work Environment**. Involves discriminatory conduct on the basis of an individual's membership in a protected class, where such conduct is so objectively offensive as to alter the conditions of the victim's employment (i.e., the harassment culminates in a tangible employment action or was sufficiently severe or pervasive to create a hostile work environment).

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6. Authorities

Unlawful Harassment is a form of discrimination that is prohibited under Title VII of the Civil Rights Act of 1964, as amended; the Rehabilitation Act, as amended; the Age Discrimination in Employment Act, as amended; and the Genetic Information Nondiscrimination Act of 2008. FDIC policy prohibits harassment pursuant to Executive Order 13087 (May 28, 1998), prohibiting discrimination in employment based on sexual orientation and Executive Order 13152 (May 2, 2000), prohibiting discrimination in employment based on status as a parent.

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7. Policy

It is FDIC's policy to strictly prohibit harassment in the workplace, including unlawful harassment in the workplace based on a prohibited basis: race, color, religion, gender (including sexual or nonsexual, pregnancy, gender identity or sexual orientation), national origin, disability (physical and/or mental), age (40 years or older), genetic information (information about an individual's genetic tests, or the manifestation of a disease or disorder in the individual's family members), status as a parent, and retaliation

Policy (cont.)

(for participating in the EEO complaint process or opposing discriminatory practices).

The FDIC will not condone harassment in any form. Any employee who is found to have harassed anyone while conducting FDIC business shall be subject to disciplinary action, up to and including removal from FDIC employment. Managers and supervisors who participate in or fail to take immediate and appropriate action on reported incidents of harassment, or who retaliate against employees who report such incidents or who file harassment complaints, are also subject to appropriate (including disciplinary) action for failure to perform their managerial or supervisory duties.

The FDIC will not tolerate retaliation against any employee for reporting harassment under this or any other non-discrimination policy or process. Neither will FDIC tolerate retaliation against any employee for assisting or participating in a fact-finding inquiry or investigation about a reported harassment.

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8. Roles and Responsibilities

Specific roles and responsibilities pertaining to the Anti-Harassment Program are as follows:

a. **Employees**. It is the responsibility of every employee, regardless of position, grade, or occupation to refrain from engaging in harassing conduct. An employee can prevent or eliminate harassment by:

(1) Examining his/her behavior on the job, or when conducting FDIC business, by eliminating inappropriate conduct;

(2) Supporting and meeting the requirements of the Anti-Harassment Program; and

(3) Identifying and taking individual action to stop inappropriate behavior by communicating directly and immediately with the person(s) whose behavior is offensive, or immediately bringing the matter to the attention of supervisory or managerial officials, or in the case of unlawful harassment, the Anti-Harassment Program Coordinator, OMWI.

Note: Employees must cooperate in any fact-finding inquiry or investigation regarding an allegation of harassment.

b. **Supervisors and Managers**. It is the responsibility of all supervisors and managers to maintain a work environment free of harassment and to take all allegations of harassment seriously. To this end, supervisors and managers are required to take immediate action to assess whether or not the alleged

Roles and Responsibilities (cont.)

harassment occurred. Supervisors and managers must:

(1) Prevent and take appropriate action with respect to any alleged prohibited conduct that can be construed as harassment;

(2) Take prompt, appropriate, and effective action when presented with an allegation of harassment; and

(3) Seek assistance in conducting an inquiry or investigation, if necessary, and how best to correct the problem, by consulting with:

(a) The Anti-Harassment Program Coordinator, OMWI; and/or

(b) A Human Resources Specialist in LERS, HRB, DOA

(**Note**: Office of Inspector General (OIG) supervisors and managers should consult with the OIG Human Resources in the OIG); and/or

(c) The Assistant General Counsel, any Senior or Field Counsel, in the Labor, Employment & Administration Section (LEAS), Legal Division.

c. **Anti-Harassment Program Coordinator**. The Anti-Harassment Program Coordinator is responsible for:

(1) Coordinating program implementation with LERS, DOA; LEAS, Legal Division, and other Divisions and Offices as appropriate;

(2) Advising and providing technical assistance to managers and supervisors in preventing and addressing allegations of unlawful harassment;

(3) Monitoring the effectiveness of the Anti-Harassment Program by maintaining information on the number of allegations of unlawful harassment, bases for the allegations, actions taken, and assessing trends and patterns to develop prevention strategies;

(4) Recommending program changes to enhance the Anti-Harassment Program;

(5) Working with other FDIC program officials to effectively prevent and eliminate unlawful harassment in the workplace through a continuing education program; and

Roles and Responsibilities (cont.)

(6) Ensuring that the Anti-Harassment Program policies and procedures are posted on the OMWI website and publicized throughout FDIC, including dissemination of the policy and procedures to employees through written informational materials.

d. **Fact-Finder**. The Fact-Finder is responsible for:

(1) Conducting an expedited investigation into the alleged harassment;

(2) Preparing a report of factual findings, as necessary, and submitting the report to the appropriate management official; and

(3) Maintaining all documents collected relevant to the fact-finding inquiry in accordance with FDIC Circular 1210.1, FDIC Records and Information Management (RIM) Policy Manual.

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9. Anti-Harassment Complaint Procedures

The procedures outlined in this Section will assist FDIC in fulfilling its obligations to: (a) prevent harassment before it becomes severe or pervasive; (b) conduct a prompt, thorough, and impartial inquiry or investigation into allegations of harassment; and (c) take prompt and appropriate corrective action when FDIC determines that harassing conduct has occurred.

a. **Initiator Action**. Any employee who believes that he/she has been subjected to harassment prohibited by this policy is expected to report the matter immediately to:

(1) A supervisor or manager in his/her chain of supervision; or

(2) The Anti-Harassment Program Coordinator, OMWI.

To the maximum extent possible, FDIC will protect the confidentiality of employees who allege harassment. Since FDIC cannot conduct an effective fact-finding inquiry or investigation without revealing certain information to the alleged harasser and potential witnesses, FDIC cannot guarantee complete confidentiality. However, FDIC will share information and records about the allegation only with those who have a need to know.

b. **Management Action**. Upon receiving an allegation of harassment or witnessing conduct that may be perceived as harassment, the supervisor and/or manager (or other official to whom the harassment was reported) must immediately assess the situation to determine the severity of the alleged misconduct and whether any immediate interim corrective action is required

Anti-Harassment Complaint Procedures (cont.)

to ensure that further prohibited harassment does not occur. Examples of such interim measures may include, but are not limited to:

(1) Making schedule changes to avoid contact between the parties;

(2) Transferring the alleged harasser; or

(3) Placing the alleged harasser on non-disciplinary leave with pay pending the conclusion of the inquiry or investigation.

It is important that the supervisor and manager (or other official to whom the harassment was reported) promptly consult with a Human Resources Specialist, LERS, DOA; the Anti-Harassment Program Coordinator, OMWI, and/or LEAS Assistant General Counsel or Senior or Field Counsel, Legal Division and request assistance in conducting a fact-finding inquiry, investigation, or other action (including interim measures), as appropriate. Management should ensure that the individual who conducts an inquiry will objectively gather the relevant facts. The alleged harasser should **not** have supervisory authority over the individual who conducts the inquiry and should **not** have any direct or indirect control over the inquiry.

Where it is appropriate, an independent Fact-Finder will be assigned to conduct a prompt, thorough, and impartial investigation into the alleged harassment. The Fact-Finder will commence the investigation within five (5) business days of assignment.

The Chief, LERS, DOA, will advise the Anti-Harassment Program Coordinator, OMWI that an investigation is being conducted for coordination purposes.

Upon completion of the investigation, a report of findings may be prepared (as appropriate) and provided to the office requesting the investigation and/or to the person responsible for taking corrective action.

c. **Agency Action**. The management official receiving the report will review the results and determine, in consultation with the Human Resources Specialist, LERS, DOA, the appropriate action (including disciplinary) to be taken.

The responsible management official will take prompt and appropriate remedial measures, including disciplinary action; whenever it is determined that harassment has occurred in violation of this policy. Remedial measures should be designed to stop the harassment, correct its effects on the affected

Anti-Harassment Complaint Procedures (cont.)

employee, and ensure that the harassment does not recur. The remedial measures need not be those that the affected employee requests or prefers, as long as they are effective.

After the fact-finding inquiry or investigation is completed, the management official and/or Human Resources Specialist, LERS, DOA, will notify the employee raising the alleged harassment and the individual involved in the alleged harassing conduct, in writing, of the completion of the investigation, consistent with the Privacy Act.

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10. Relationship to Other Complaint Procedures

The Anti-Harassment Program complaint procedures contained in this policy are separate and apart from the Federal EEOC Discrimination Complaint Procedures (FDIC Circular 2710.2) and the FDIC Discrimination Complaint Procedures (FDIC Circular 2710.4). Allegations of harassment will be addressed as described in this policy with the intent of taking prompt and appropriate corrective action to eliminate harassing conduct. An inquiry or investigation conducted pursuant to the Anti-Harassment Program may occur or continue, regardless of whether the employee has initiated the EEO complaint process.

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11. Training

The OMWI conducts or provides training for managers, supervisors, and employees on the Anti-Harassment Program. The training includes information on the legal definition of unlawful harassment, conduct that constitutes harassment, the anti-harassment complaint process, and the responsibilities of employees, supervisors, and managers when an allegation of prohibited harassment has been reported. The training also reinforces FDIC's policy against retaliation as a result of reporting or participating in a fact-finding inquiry or investigation regarding a reported allegation of prohibited harassment.

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12. Reporting Requirements

The Anti-Harassment Program Coordinator, OMWI, will obtain information from LERS, DOA and/or LEAS, Legal Division on a quarterly basis on the number of unlawful harassment complaints, the bases and issues, and the actions taken. He/she will use the information to assess patterns and trends for identifying prevention methodologies and training needs for reporting purposes.

13. Contacts	Questions concerning the Anti-Harassment Program may be directed to the Anti-Harassment Program Coordinator at (703) 562-6225, or the FDIC's Complaints Processing Branch, OMWI at (703) 562-6073 or for TTY (703) 562-2473, or by email at AntiHarassment@fdic.gov.
14. Effective Date	The provisions outlined in this Circular are effective immediately.

APPENDIX C-3

CIRCULAR 2400.2 – Whistleblower Protection Rights

FDIC

*Name and telephone number has been changed to reflect the new Contact

FEDERAL DEPOSIT INSURANCE CORPORATION

DIRECTIVE SYSTEM

TYPE AND NUMBER	
Circular 2400.2	
CONTACT	TELEPHONE NUMBER
*Gloria J. Banks	(703) 562-2613
DATE	
June 6, 2001	
DATE OF CANCELLATION *(Bulletins Only)*	

TO: All Employees

FROM: Arleas Upton Kea
Director, Division of Administration (DOA)

SUBJECT: Whistleblower Protection Rights

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1. Purpose

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

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2. Scope

This circular applies to all current and former FDIC employees and applicants for employment at the FDIC. Where the terms of a negotiated agreement differ from the provisions of this circular, the negotiated agreement is applicable, provided it conforms with Federal law. Any negotiated agreement should be read in conjunction with this circular.

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3. Background

The Whistleblower Protection Act (5 U.S.C. 2302(b)(8)) protects Federal employees and applicants for employment from retaliatory action or reprisal for whistleblowing.

Additionally, FDIC employees are protected from reprisal for whistleblowing activities under 12 U.S.C. 1831j.

The Inspector General Act (5 U.S.C. Appendix 3, § 7) prohibits reprisal against any employee for making a complaint or disclosing information to an Inspector General.

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4. Definitions

Terms specific to this circular are defined below:

a. **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.

Definitions (cont'd)

b. **Whistleblowing**. When a Federal employee or applicant for employment discloses information to the OSC, the Inspector General, or other comparable agency official, which the individual reasonably believes evidences:

(1) a violation of law, rule, or regulation;
(2) gross mismanagement;
(3) a gross waste of funds;
(4) an abuse of authority; or
(5) a substantial and specific danger to public health or safety.

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5. Policy

a. Under the Whistleblower Protection Act, it is prohibited for a Federal official or employee to take, fail to take, threaten to take, or threaten to 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. Employees, former employees, and applicants may appeal a suspected reprisal for whistleblowing.

b. Under 12 U.S.C. 1831j, FDIC employees 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, 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.

c. Under the Inspector General Act, it is prohibited to take or threaten any action against an employee as a reprisal for making a complaint or disclosing information to the Inspector General, unless the complaint was made, or information disclosed, with knowledge of (or with willful disregard for) its falsity.

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6. Procedures

Individuals seeking protection under the Federal whistleblower laws shall select one of the following filing remedies.

a. A complaint with the Office of Special Counsel for investigation;

Procedures (cont'd)

b. A grievance under the FDIC negotiated grievance procedures (if the employee is in a bargaining unit);

c. A lawsuit in Federal Court under 12 U.S.C. 1831j; or

d. An appeal with the Merit Systems Protection Board.

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7. Contacts

Questions regarding Whistleblower Protection Rights or filing procedures should be directed to the local Labor and Employee Relations representatives, DOA, Personnel Services Branch. Individuals also may contact the Office of Special Counsel at (1-800-572-2249) for information regarding whistleblower disclosures and/or procedures for filing a complaint with the OSC.

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8. Effective Date

The provisions of this circular are effective immediately.

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 Progam (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.

l. 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.