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# FDIC DIRECTIVE 2710.03

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## Anti-Harassment Program

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**Approval Authority:** Nikita Pearson, Director

**Originating Division/Office:** Office of Minority and Women Inclusion

**Approval Date:** 03/29/2021

**Pedestrian Change Date:** 06/13/2021

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

### PURPOSE

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

### SCOPE

This Directive applies to all FDIC Divisions/Offices.

### AUTHORITIES

- See [Appendix A - Authorities](#).

### FORMS

None.

### SUMMARY OF CHANGES

This Directive supersedes FDIC 2710.3, Anti-Harassment Program, dated December 8, 2015.

### REVISION, dated March 29, 2021

This Directive had been revised to:

- Include terminology related to sexual harassment in the examples provided in the definition of harassment;

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

**PEDESTRIAN CHANGE, dated June 13, 2021**

This Directive had been revised to:

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

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## **BACKGROUND**

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

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

# POLICY

## A. General Policy

It is the policy of the FDIC to maintain a workplace free from all forms of harassment, including but not limited to harassment based on race, color, religion, sex (including sexual or nonsexual, pregnancy, gender identity, or sexual orientation), national origin, disability (physical and mental), age (40 years or older), genetic information (information about an individual's genetic tests, or the manifestation of a disease or disorder in the individual's family members), status as a parent, and retaliation (for participating in the EEO complaint process or opposing discriminatory practices). The FDIC will not tolerate harassment by or against any applicant, employee, or contractor. Similarly, the FDIC will not tolerate retaliation against any applicant, employee, or contractor for opposing harassment, reporting harassment, or participating or assisting in any inquiry, investigation, lawsuit, or other proceeding concerning harassment. The FDIC expects anyone who witnesses or is the alleged victim of harassment to report it immediately, consistent with the [Reporting Process](#) provided.

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

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

- Offensive jokes, comments, objects, or pictures.
- Unwelcome questions about a person's identity (e.g., disability status, gender identity, sexual orientation, national origin, religion).
- Undue and unwelcome attention.
- Ridicule or mockery.
- Displaying offensive objects or pictures.
- Insults or put-downs.
- Unwelcome touching or contact.
- Unwelcome sexual advances.
- Requests for sexual favors.
- Other verbal or physical harassment of a sexual nature.
- Slurs, epithets, or name-calling.
- Threats or other forms of intimidation.
- Physical or sexual assault.

- Engaging in bullying, intimidating, or threatening behavior.

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

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

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

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

## **B. Reporting Process**

### **1. Reporting Alleged Harassment**

- a. Individuals who observe, experience, or otherwise learn about harassment covered under this Directive are expected to promptly report the conduct to any of the following:
  - 1) The alleged victim's immediate supervisor;
  - 2) The supervisor of the person responsible for the alleged conduct;
  - 3) Any management official with supervisory responsibility;
  - 4) Anti-Harassment Program Coordinator (AHPC);
  - 5) LERS Assistant Director; or
  - 6) Any LERS Specialist.

When allegations of harassment are received, notify AHPC immediately.

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

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

## 2. Processing/Investigation of Allegations

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

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

may be subject to disciplinary action, up to and including removal from Federal service.

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

An individual who reports harassment under this Directive may still pursue statutory, administrative, or collective bargaining remedies regarding an alleged act of harassment (e.g., EEO complaint). Such other remedial processes use different procedures, have different rules, requirements, and timeframes, and may provide different remedies than are available under this Directive. Reporting harassment under this Directive does not satisfy the requirements or delay the time limits or deadlines applicable for initiating or pursuing redress through other processes. For more information on filing an EEO complaint, employees should visit the [OMWI website](#). Individuals can find contact information for the FDIC's Equal Opportunity Compliance and Training Branch in OMWI at <https://fdicnet.fdic.gov/content/omwi/home/eo/anti-harassment.html>.

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

### 3. Preventive/Corrective Action

The Fact Finder provides the investigative findings to the appropriate management official. In most cases, this will be the alleged harasser's immediate supervisor. However, the matter may be referred to a manager outside of the alleged harasser's chain of command. FDIC management, in consultation with LERS and LEAS, determines what, if any, action to take as a result of the findings. If harassment has occurred, the FDIC takes immediate, appropriate action. The FDIC takes action no later than 60 calendar days of receiving notice of a report of harassment, as appropriate.



## **RESPONSIBILITIES**

### **A. Managers/Supervisors:**

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

### **B. Employees:**

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

### **C. Anti-Harassment Program Coordinator (AHPC):**

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

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

**D. Labor and Employee Relations Section (LERS):**

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

**E. Labor, Employment, and Administration Section (LEAS):**

1. In collaboration with LERS, serves as Fact Finder to conduct investigations of allegations of harassment, where appropriate;
2. In collaboration with LERS, provides advice and guidance to management on appropriate preventive or corrective action(s) to take in connection with allegations of harassment; and

3. In collaboration with LERS, notifies the AHPC when the investigation of an allegation of harassment is completed, a summary of the findings, and what, if any, corrective action was taken in connection with EEO conflict cases.

**F. Contracting Officers:**

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

## **APPENDIX A - AUTHORITIES**

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

## **APPENDIX B - CONTACT INFORMATION**

Employees can contact the AHPC at [Anti-Harassment@fdic.gov](mailto:Anti-Harassment@fdic.gov) and can find additional contact information on the FDIC internal website at <https://fdicnet.fdic.gov/content/omwi/home/eeo/anti-harassment.html>.

FDIC's Equal Opportunity Compliance and Training Branch in OMWI is available on the FDIC internal website at <https://fdicnet.fdic.gov/content/omwi/home/eeo/anti-harassment.html>.

For information on filing an EEO complaint, employees should visit the OMWI website at <https://fdicnet.fdic.gov/content/omwi/home/eeo/anti-harassment.html> (FDIC internal website) or <https://www.fdic.gov/about/diversity/eo/formalpro.html> (FDIC.gov – FDIC external website).

## GLOSSARY OF TERMS

*Anti-Harassment Program Coordinator (AHPC)*: The designated employee responsible for overseeing the implementation of the Anti-Harassment Program.

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

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

*Fact Finder*: An individual assigned to conduct a prompt, independent, thorough, and impartial investigation into alleged harassment. The Fact Finder generally will be a Human Resources Specialist in LERS, but a Fact Finder may also be another appropriate official depending on the circumstances, e.g., conflict of interest situations.

## **GLOSSARY OF ACRONYMS**

*AHPC*: Anti-Harassment Program Coordinator

*EEOC*: Equal Employment Opportunity Commission

*LEAS*: Labor, Employment and Administration Section (Legal Division)

*LEERS*: Labor and Employee Relations Section (Division of Administration)

*OIG*: Office of Inspector General

*OMWI*: Office of Minority and Women Inclusion