

A blue-tinted photograph of the Federal Reserve Building facade serves as the background for the central text. The building features a prominent portico with four columns and a central entrance. An American flag flies on a tall pole in front of the building. The sky is a clear, light blue.

No FEAR Act 17th Annual Report

2020

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM



No FEAR Act 17th Annual Report

2020

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Overview

The Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (No FEAR Act) requires that federal agencies be publicly accountable for violations of anti-discrimination laws and policies.¹ Federal agencies must post quarterly and annual statistical data relating to federal sector Equal Employment Opportunity (EEO) complaints on their public websites, reimburse the Judgment Fund for payments made, and notify employees and applicants for employment about their rights under the federal anti-discrimination and whistleblower laws.

This report summarizes the accomplishments of the Board's EEO program in implementing the No FEAR Act, focusing principally on EEO complaint processing. These efforts evidence the Board's commitment to promote accountability for anti-discrimination and whistleblower protection.

About the Federal Reserve

The Federal Reserve System is the central bank of the United States. It performs five general functions to promote the effective operation of the U.S. economy and, more generally, the public interest:

- **Conducts the nation's monetary policy** to promote maximum employment, stable prices, and moderate long-term interest rates in the U.S. economy.
- **Promotes the stability of the financial system** and seeks to minimize and contain systemic risks through active monitoring and engagement in the U.S. and abroad.
- **Promotes the safety and soundness of individual financial institutions** and monitors their impact on the financial system as a whole.
- **Fosters payment and settlement system safety and efficiency** through services to the banking industry

¹ No FEAR Act of 2002, Pub. L. 107-174, 5 U.S.C. § 2301, *et seq.*

and the U.S. government that facilitate U.S.-dollar transactions and payments.

- **Promotes consumer protection and community development** through consumer-focused supervision and examination, research and analysis of emerging consumer issues and trends, community economic development activities, and the administration of consumer laws and regulations.

The Board in Washington, D.C. is the governing body of the Federal Reserve System (System). The Board oversees the operations of the 12 Reserve Banks and shares with them the responsibility for supervising and regulating certain financial institutions and activities. (For more information about the Board and the System, see *Federal Reserve System Purposes & Functions* at <https://www.federalreserve.gov/aboutthefed/pf.htm>.)

Office of Diversity and Inclusion

The Office of Diversity and Inclusion (ODI) administers and directs the Board's EEO compliance policies, practices, and programs. In addition to implementing the No FEAR Act requirements, ODI is responsible for implementing the following Board and Equal Employment Opportunity Commission (EEOC) program directives:

1. Management Directive 715 (MD-715) contains policy guidance and standards for establishing and maintaining an effective affirmative program for EEO.²
2. Management Directive 110 (MD-110) contains procedures to be followed when processing complaints of discrimination filed by federal employees and by applicants for federal employment alleging employment discrimination.³

² See <https://www.eeoc.gov/federal/directives/md715.cfm>.

³ See <https://www.eeoc.gov/federal/directives/md110.cfm>.

3. The Board's Rules Regarding Equal Opportunity set forth the requirements and procedures relating to the Board's policies to promote equal opportunity.⁴

About This Report

The No FEAR Act requires each federal agency to submit an annual report to Congress no later than 180 days after the end of each fiscal year (FY). The FY for the federal government begins on October 1 and ends on September 30. Based on this requirement, the Board hereby submits this 17th annual report, pursuant to the requirements of section 203 of the No FEAR Act.

In accordance with section 203(a) of the No FEAR Act and its regulations thereunder (5 C.F.R. § 724.302), this 17th annual report is being forwarded to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Homeland Security and Governmental Affairs, U.S. Senate, the Committee on Government Reform, U.S. House of Representatives, each committee of Congress with jurisdiction relating to the Board, the Chair of the EEOC, the Attorney General of the United States, and the Director of the Office of Personnel Management (OPM).

As required by section 203(a), this annual report addresses:

1. the number of federal court cases, pending or resolved, arising under the anti-discrimination

- laws and authorities included in the No FEAR Act, and the status and disposition of the cases;
2. Judgment Fund reimbursements, adjustments to agency budgets to meet reimbursement requirements, and the amount of reimbursement required for attorneys' fees where such fees have been separately designated;
3. the number and type of disciplinary actions related to discrimination, retaliation, or harassment and the agency's policy relating to appropriate disciplinary action;
4. year-end summary data related to federal sector EEO complaint activity;
5. a detailed description of the agency's policy for taking disciplinary actions against employees for conduct inconsistent with the anti-discrimination laws referenced by the No FEAR Act;
6. an analysis of the information provided in this report, including an examination of trends, causal analysis, practical knowledge gained, and actions planned or taken to improve compliance; and
7. the agency's plan to train employees on their rights under the No FEAR Act.

Further guidance on each agency's reporting obligations is provided in 5 C.F.R. § 724.302, which also requires the submission of the annual report to the Director of OPM, for the implementation of a best practices study and the issuance of advisory guidelines.

This report provides EEO data and analysis for the No FEAR Act for FY 2020 (October 1, 2019, through September 30, 2020).

⁴ See <https://www.gpo.gov/fdsys/pkg/CFR-2013-title12-vol4/xml/CFR-2013-title12-vol4-part268.xml>.

Results and Data

The No FEAR Act requires that federal agencies report on the number of cases in federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the federal anti-discrimination and whistleblower protection laws applicable to the agency as defined in 5 C.F.R. § 724.102 in which an employee, former federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) involved. 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, and national origin) (title VII);
- the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 633a (age);
- the Equal Pay Act of 1963, 29 U.S.C. § 206(d) (gender-based wage differentials);
- section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 (disability)
- the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff-1 (genetic information); and
- the Civil Service Reform Act of 1978, 5 U.S.C. § 2302(b) (race, color, religion, sex, national origin, age, disability, marital status, political affiliation, and whistleblowing).

EEO Complaint Activity in Federal Court Disposition

As shown in [table 1](#), there were no new Federal District Court cases filed in FY 2020. The Board had two cases pending in federal court in FY 2020.

In the aggregate, for the cases identified in table 1, and separated by provision(s) of the law involved, the status or disposition (including settlement):

Table 1. Federal court cases, fiscal year 2020

Status or disposition	Total cases pending or resolved
Basis of actions	
Pending	
Age (29 U.S.C. § 633a)	0
Race, color, religion, sex, or national origin (42 U.S.C. § 2000 e-16)	1
Equal Pay Act (29 U.S.C. § 206)	0
Disability (29 U.S.C. § 71)	1
Basis of actions	
Resolved	
Age (29 U.S.C. § 633a)	0
Race, color, religion, sex, or national origin (42 U.S.C. § 2000 e-16)	0
Equal Pay Act (29 U.S.C. § 206)	0
Disability (29 U.S.C. § 71)	1

Judgment Fund Reimbursements and Budget Adjustments

The Board does not use the Judgment Fund.⁵ Accordingly, the Board made no reimbursements to the Judgment Fund during the reporting period.

1. **The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in 5 C.F.R. § 724.102**
None.
2. **The amount of reimbursement to the fund for attorney's fees where such fees have been separately designated**
None.

⁵ The Judgment Fund is a permanent, indefinite appropriation used to pay court judgments and U.S. Department of Justice settlements of actual or imminent lawsuits against the U.S. government. It is a permanent appropriation and is administered by the Judgment Fund Branch, which is part of the U.S. Department of Treasury, Financial Management Service. 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, 2517, 2672, or 2677.

3. **For each FY, any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred under 5 C.F.R. § 724.103**

None.

Disciplinary Policy and Actions

For federal court cases that involve allegations of a violation of federal anti-discrimination or whistleblower protection laws, federal agencies are required to report the number of employees disciplined. Discipline is defined as any one or a combination of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal. Whether or not in connection with 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 agency policy that prescribes disciplinary action for discrimination, retaliation, or harassment conduct, and whistleblower protection law violations.

1. **In connection with cases identified in table 1, the total number of employees in each FY disciplined as defined in 5 C.F.R. § 724.102 and the specific nature, e.g., reprimand, etc., of the disciplinary actions taken, separated by the provision(s) of law involved.**

None.

2. **A detailed description of the agency's policy for taking disciplinary action against federal employees for conduct that is inconsistent with federal anti-discrimination and whistleblower protection laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws.**

The Board updated the disciplinary actions and adverse action policies in 2019. The Board's Disciplinary Actions Policy and Adverse Action Policy (see [appendix B](#)) are used to discipline employees who have violated anti-discrimination laws. Under the Disciplinary Actions Policy, the Board may take progressive discipline to correct unsatisfactory conduct or other work-related matters. Progressive discipline is a process for dealing with job-related behavior that does not meet the Board's expected and communicated performance standards. The primary purpose for progressive discipline is to provide the employee

notice of an opportunity to improve conduct or performance issues. It involves increasingly formal efforts to provide feedback so that the employee can correct the problem. It can include, where appropriate, oral counseling, written warnings, and suspensions of 14 calendar days or less. Under the Adverse Action Policy, the Board issues a stronger discipline, such as suspensions of more than 14 calendar days, a reduction in grade or pay, or separation.

The Board administers two policy statements that reinforce the Board's commitment to establishing a workplace free from discrimination, harassment, and/or retaliation and inform employees of their rights and responsibilities. These policies are accessible on the Board's intranet—Equal Employment Opportunity Policy Statement and the Discriminatory Workplace Harassment Policy (see [appendix B](#)).

The Equal Employment Opportunity Policy explains the Board's firm commitment to EEO and the promotion of a strong affirmative employment program. The EEO policy also explains the administrative EEO complaint process, including how to initiate the process, pertinent regulatory timeframes, and the roles and responsibilities for implementing the policy. In FY 2020, the Board revised the policy to clarify that discrimination on the basis of sex includes discrimination based on sexual orientation and gender identity. The Board disseminates information regarding diversity, equity, and inclusion and the EEO complaint process to all new employees during onboarding. Information pertaining to the EEO complaint process and EEO counselor contacts is posted on the ODI website and throughout the Board's office buildings. The Discriminatory Workplace Harassment Policy clearly defines harassment and inappropriate conduct, and makes clear that harassment, inappropriate conduct, and retaliation will not be tolerated at the Board. This policy identifies multiple avenues of redress for claims of harassment and does not limit employees to the EEO process.

Final Year-End No FEAR Act Summary Data

See [appendix A](#) for a detailed look at the formal complaints filed against the agency during the reporting period, including the number of com-

plaints and complainants and the bases and issues alleged for each of the five immediate preceding fiscal years.

Analysis of Complaints

The No FEAR Act requires an examination of trends and a causal analysis. Observations related to these areas are described below.

Trends and Causal Analysis

EEO Complaint Activity

Over the preceding five fiscal years, the Board has averaged six (5.8) formal complaints per year. In FY 2020, five formal complaints were filed, compared to seven in FY 2019. The lowest number of complaints filed over this five-year period was four in FY 2018. The highest number of complaints filed were seven in FY 2016 and FY 2019. (See figure 1.)

The five formal complaints filed in FY 2020 comprised *less than 1 percent* (0.002 percent) of the total Board permanent workforce of 2,786 employees. The Board saw an incremental downward trend in complaint filings between FY 2016 and FY 2020, but year-to-year fluctuations make the number of complaints statistically insufficient to establish any causal relationship or glean a discernible pattern from the filings.

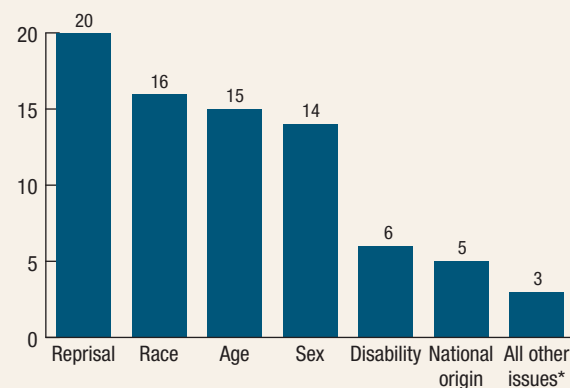
Bases of Discrimination in EEO Complaints

The basis of the complaint is the protected characteristic the complainant alleges formed the motivation for the discriminatory conduct. The bases pro-

TECTED BY EEO statutes include race, color, religion, national origin, sex (including discrimination based on sexual orientation, gender identity, and pregnancy), disability, age, genetic information, and retaliation (for participating in the EEO complaint process or for opposing practices made illegal under the EEO laws).

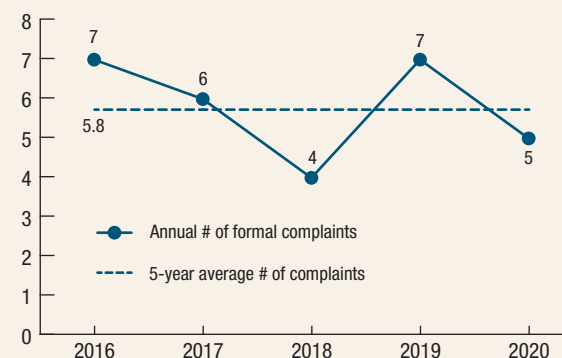
Reprisal and retaliation complaints (20) represent the most common basis for complaints, with an average of four such complaints filed on a fiscal basis from FY 2016 to FY 2020. During this same timeframe, race-based (16) and age-based (15) complaints were the next highest reported bases, averaging three complaints per year each, followed closely by sex (14), accounting for nearly three complaints a year. Together, these four bases of discrimination account for 82 percent of the total bases filed during the five-year period.⁶ (See figure 2.)

Figure 2. Total number of Board EEO complaints by basis (FY 2016–20)



*Color, religion, Equal Pay Act, or genetic information.

Figure 1. Number of Board EEO complaints filed by fiscal year (FY 2016–20)

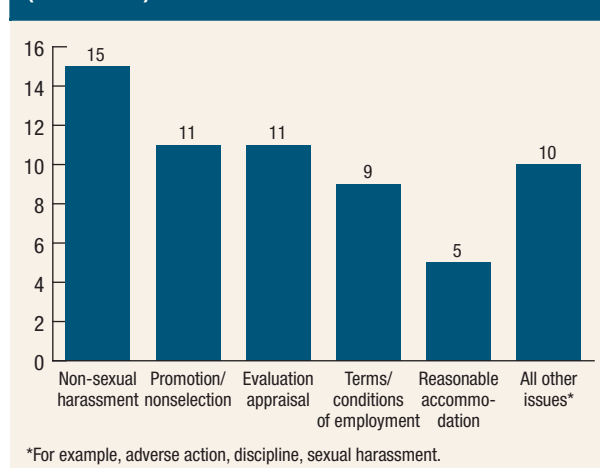


Issues in EEO Complaints

The issue of a complaint is the specific subject matter about which the individual is complaining or the alleged discriminatory incident for which the individual is seeking redress. Of the 29 complaints filed over the past five fiscal years, the most frequently alleged issue was non-sexual harassment (15), followed by promotion/non-selection (11), and evaluation appraisal (11).⁷ (See figure 3.)

⁶ Complaints can be filed on multiple bases. The sum of the bases may not equal total complaints filed in the fiscal year.

⁷ Complaints can be filed on multiple issues. The sum of the issues may not equal total complaints filed in the fiscal year.

Figure 3. Total number of Board EEO complaints by issue (FY 2016–20)

Complaint Processing Data

This section contains data regarding processing times for informal and formal EEO complaints. The objective of EEO counseling is to resolve the complaint at the earliest stage in the EEO process. The formal EEO complaint process focuses on the adjudication of the merits of complaint and has various stages (for example, investigation, hearings, appeal, reconsideration). Not all formal complaints complete all processing stages.

EEO Counseling

The Board is committed to conducting timely EEO counseling sessions in accordance with EEOC regulation 29 C.F.R. § 1614.105(d) and the Board EEO regulation 12 C.F.R. § 268.104(d). All FY 2020 Board counseling sessions were completed within 30 calendar days unless the aggrieved employee agreed to an extension.⁸

Board EEO counselors closely interact with employees and management to promote resolutions for issues that can be settled through the EEO pre-complaint process. A pre-complaint counseling “resolution” occurs when a pre-complaint is withdrawn, a settlement is reached, or a formal complaint is not filed.

⁸ In accordance with EEOC regulation at 29 C.F.R. § 1614.105(d) and the Board EEO regulation at 12 C.F.R. § 268.104(d), counseling of an informal EEO complaint (also referred to as a pre-complaint) must be completed within 30 calendar days, unless the aggrieved person agrees to extend the counseling period up to an additional 60 calendar days.

All aggrieved persons are offered the option of electing between EEO counseling or Alternative Dispute Resolution (ADR) to attempt resolution of their EEO pre-complaint. For complainants who choose EEO counseling, Board EEO counselors play a pivotal role in assisting to resolve EEO pre-complaints early and informally. Complainants who opt for ADR (for example, mediation, facilitation, or conciliation) participate in a forum designed to remedy the situation quickly and effectively to the satisfaction of both parties.⁹ All employees are offered ADR within the EEO complaint process, and the Board requires all management officials to participate in the ADR process. This mandate ensures the Board’s compliance with the EEOC’s Management Directive 110, which requires management participation when requested.

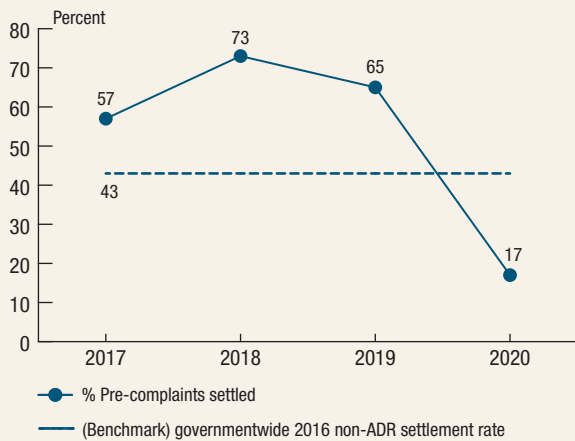
ODI uses the EEOC’s Non-Alternative Dispute Resolution (non-ADR) Resolution Rate for pre-complaints as the benchmark to measure the effectiveness of the Board’s EEO Program’s pre-complaint counseling efforts. According to the most recent government-wide data available from the FY 2016 *Annual Report on the Federal Workforce*, the federal sector non-ADR pre-complaint resolution rate was 43 percent.¹⁰ The Board surpassed this EEOC non-ADR resolution benchmark for EEO counseling performed from FY 2017 to FY 2019, but fell short in FY 2020. The Board received six pre-complaints in FY 2020 of which one resulted in a resolution (17 percent). FY 2020 appears to be an anomaly. However, two of the five FY 2020 pre-complaints that resulted in formal complaints were later resolved during the formal stage of the EEO process. (See figure 4.)

Employees may also seek resolution of non-EEO issues through the Board’s Adjusting Work-Related Problems Policy administered by the Human Resources (HR) department. ODI collaborates with the Employee Relations function within the HR department to reach resolutions of non-EEO com-

⁹ A complainant may enter ADR at any time during the complaint process, i.e., either the pre- or formal complaint stage.

¹⁰ Of the 35,566 EEO counselings completed government-wide in 2016, 16,117 (45 percent) federal sector pre-complainants did not participate in ADR, i.e., their EEO pre-complaints were processed through EEO counseling. There were 6,959 non-ADR federal sector EEO pre-complaints resolved, resulting in a 43 percent resolution rate for the entire federal government. See EEOC Office of Federal Operations (OFO), *Annual Report on the Federal Workforce (Fiscal Year 2016)*, figures 6.1 and 6.2, pp. 30–31; available at https://www.eeoc.gov/sites/default/files/migrated_files/federal/reports/fsp2016/fsp2016.pdf.

Figure 4. Percentage of EEO counseling resolutions by fiscal year (FY 2017–20)



Note: Complaint numbers for 2016 include “pre-counseling” EEO contacts resolved without an EEO pre-complaint being filed; accordingly, the 2016 numbers are omitted from trend analysis.

plaints through mediation and/or facilitated discussions between the parties involved.

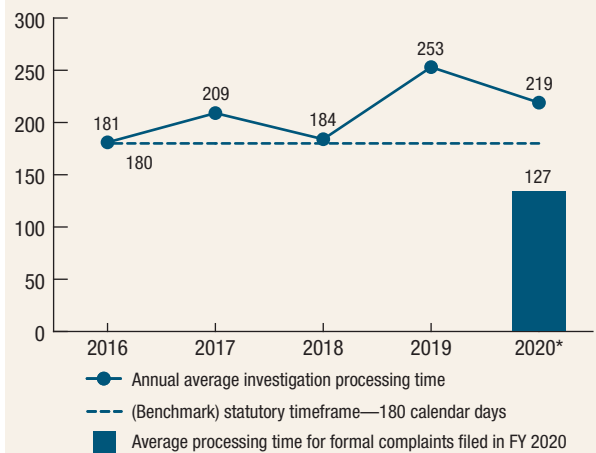
EEO Investigation

In accordance with 29 C.F.R. § 1614.108(e) and 12 C.F.R. § 268.107(e)(1), an investigation must be completed within 180 calendar days, unless the complainant agrees to extend the deadline, or the complaint is amended. The EEOC’s most recently published FY 2016 *Annual Report on the Federal Workforce* listed the average time for federal agencies to complete an investigation that year at 210 calendar days—approximately one month over the 180-calendar-day statutory timeframe.¹¹

¹¹ EEOC OFO, *Annual Report on the Federal Workforce (Fiscal Year 2016)*, figure 6.7, p. 39, see note 10.

At the Board, the annual average investigation completion time for all complaints pending during FY 2020 was 219 calendar days and investigation processing times for complaints over the preceding five fiscal years (FY 2016 to FY 2020) averaged 209 calendar days. The Board’s increased average processing times can be attributed to complainants amending their complaints late in the investigation stage, formal complaints being held in abeyance during the investigation pending a resolution, and/or the closure of pending cases with shorter investigation processing times. Recent efforts to identify and remove inefficiencies in complaint processing resulted in timely investigation completion for all complaints filed at the Board during FY 2020, with an average investigation time of 127 calendar days—53 calendar days below the statutory benchmark. (See figure 5.)

Figure 5. EEO investigation processing time of pending complaints in calendar days by fiscal year (FY 2016–20)



*All FY 2020-filed formal complaints were processed in a timely manner with an average investigation completion period of 127 calendar days.

Actions to Improve the Program

The No FEAR Act requires federal agencies to describe any actions planned or taken to improve agency complaint or EEO programs. In addition, agencies are to discuss practical knowledge gained through the experience of administering the programs.

Actions Planned to Improve the EEO Program in 2021

- Update No FEAR Act training to include content on religious harassment and accommodation, an emerging issue in the federal sector workforce, including additional subject matter content in compliance with existing federal EEO laws and regulations and Board policies.
- Deliver “Lunch and Learn” sessions on a series of EEO topics.
- Publish an educational toolkit on anti-harassment and the EEO process to increase knowledge by responding to common questions about workplace harassment and EEO complaints processing.
- Deliver additional Civil Treatment training workshops for people leaders and employees to further promote a culture of inclusivity and respect.
- Share Boardwide the No FEAR Act Annual Report to Congress and the executive summary of the Annual EEO Program Status Report to increase transparency and build awareness of EEO program outcomes, strategies, and initiatives.
- Engage Employee Resource Groups and Board leadership in discussions to address diversity, equity, and inclusion concerns.
- Continue to research technology to enable automation of complaint tracking and electronic processing to increase efficiency of the EEO complainants processing.
- Leverage EEO analytics to evaluate progress and impact and to identify new initiatives and actions that enhance program improvements.

Actions Taken to Improve the EEO Program in 2020

- Issued new Personal Service Assistance policy guidelines for providing personal assistance services during work hours and job-related travel to Board employees with targeted disabilities, in addition to reasonable accommodation(s).
- Issued an updated EEO Policy Statement to clarify that discrimination on the basis of sex includes discrimination based on sexual orientation and gender identity.
- Introduced, in partnership with Employee Relations, the Civil Treatment for Leaders course. The course provides senior leaders and managers with the tools and resources needed to respond appropriately to issues and problems they may encounter in the workplace in order to build an inclusive work environment.
- Developed EEO toolkits on workplace harassment and the EEO complaint process. The toolkits will be published and released in the ODI *DEI Matters* newsletter and posted on the ODI website.
- Initiated a paper-to-digital transformation initiative to streamline EEO complaint processing and improve program effectiveness and stakeholder satisfaction.
- Refined ODI’s standard operating procedures for processing EEO complaints.
- Hired additional staff member to support and advance EEO program initiatives.
- Formalized EEO/HR working groups to share and acquire knowledge of issues, concerns, and practices that may minimize barriers and drive equity and inclusion concerns.
- Continued to use a variety of tools to help employees think through their situations, explore possible options for moving forward, and make thoughtful, productive decisions.

Practical Knowledge Gained

- Board leaders must consider EEO protections before implementing new or revised policies and practices, and before addressing workplace issues.
- Accountability standards are critical in ensuring a workplace free from discrimination, harassment, and retaliation.
- Most complaints at the Board are due to communication and work-related differences rather than discriminatory actions.

No FEAR Act Written Training Plan

Instructional Materials and Method of the Training

Section 202 of the No FEAR Act requires federal agencies to provide training for their employees on the rights and remedies under federal anti-discrimination, retaliation, and whistleblower protection laws. Title 5 of C.F.R. § 724.203 requires federal agencies to develop a written training plan and to have trained their employees by December 17, 2006, and every two years thereafter. Under these regulations, new employees are to receive No FEAR training within 90 days of appointment.

In FY 2020, the Board redesigned the No FEAR training content to clarify recent changes to federal EEO case law. The new training incorporated information specific to the Board's EEO complaint process, discriminatory harassment policy and procedures, reasonable accommodation policy and procedures, and diversity and inclusion at the Board. The training is included in the Board's learning management system.

The web-based training course provides instruction on all topics required by the No FEAR Act, including instruction on employee and manager rights and responsibilities. As required by the No FEAR Act and OPM regulations, the Board's online course teaches our employees about their rights and remedies available under the anti-discrimination and retaliation laws.

Training Schedule

All new employees received No FEAR training within 90 days of employment. The Board's

No FEAR training includes modules on diversity, equity and inclusion, EEO and discrimination, discriminatory workplace harassment, and disability and reasonable accommodation.

In FY 2020, the Board administered the No FEAR training to all employees.

In FY 2021, the Board will augment No FEAR training with additional web-based training courses and seminars focusing on major topics of diversity, inclusion, equal employment opportunity, inclusive leadership, and civil treatment.

Means of Documenting Completion of Training

The Board tracks No FEAR training through a learning management system. The learning management system provides an employee's training status (i.e., training completion date, training modules completed) and produces a report to track employee training status by division. Upon completion of the training, employees print a certificate of completion. An employee survey is included in the No FEAR training, which provides an opportunity for feedback on the training. The feedback enables ODI to review subject areas needing attention.

In 2020, 2,903 or 97 percent of Board employees completed the bi-annual No FEAR training.

Appendix A: Year-end No FEAR Summary Data

Table A.1. Complaint activity

Complaint activity	Comparative data					Fiscal year 2020 (thru 9/30)
	Previous fiscal year data					
	2015	2016	2017	2018	2019	
Number of complaints filed	4	7	6	4	8	5
Number of complainants	4	7	6	4	8	5
Repeat filers	0	0	0	0	0	0

Table A.2. Complaints by basis

Complaints by basis	Comparative data					Fiscal year 2020 (thru 9/30)
	Previous fiscal year data					
	2015	2016	2017	2018	2019	
Race	3	5	3	2	4	2
Color	1	1	0	1	0	0
Religion	1	0	1	0	0	0
Reprisal	4	6	3	1	7	3
Sex	2	5	3	1	3	2
National origin	3	1	2	1	1	0
Equal Pay Act	0	0	0	0	0	0
Age	1	3	2	2	5	3
Disability	0	2	3	0	1	0
Non EEO	0	0	0	0	0	0

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

Table A.3. Complaints by issue						
Complaints by issue	Comparative data					Fiscal year 2020 (thru 9/30)
	Previous fiscal year data					
	2015	2016	2017	2018	2019	
Appointment/hire	0	0	0	0	0	0
Assignment of duties	4	1	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	1	1	0	0	0	1
Removal	3	0	0	0	0	0
Suspension	0	0	0	0	0	0
Other	0	0	0	0	0	0
Duty hours	1	0	0	0	0	0
Evaluation appraisal	5	2	3	1	4	1
Examination/test	0	0	0	0	0	0
Harassment						
Nonsexual	2	6	2	2	3	2
Sexual	0	1	0	0	0	0
Medical examination	0	0	0	0	0	0
Pay (including overtime)	3	0	1	0	0	0
Promotion/non-selection	2	4	1	3	0	3
Reassignment						
Denied	0	0	1	0	0	0
Directed	0	0	0	0	0	0
Reasonable accommodation	2	4	0	0	1	0
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	0	0	1	0	1	0
Terms/conditions of employment	4	6	1	0	1	1
Time and attendance	0	0	0	0	0	0
Training	1	1	0	0	0	0
Other	2	2	0	0	0	0

Table A.7. Findings of discrimination rendered by basis

Findings of discrimination rendered by basis	Comparative data										Fiscal year 2020 (thru 9/30)	
	Previous fiscal year data											
	2015		2016		2017		2018		2019		#	%
	#	%	#	%	#	%	#	%	#	%		
Total number findings	0		0		0		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
National origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Non EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings after hearing	0	0	0	0	0	0	0	0	0	0	0	0
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
National origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Non EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings without hearing	0	0	0	0	0	0	0	0	0	0	0	0
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
National origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Non EEO	0	0	0	0	0	0	0	0	0	0	0	0

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

Table A.8. Findings of discrimination rendered by issue

Findings of discrimination rendered by issue	Comparative data										Fiscal year 2020 (thru 9/30)	
	Previous fiscal year data											
	2015		2016		2017		2018		2019		#	%
	#	%	#	%	#	%	#	%	#	%		
Total number findings	0		0		0		0		0		0	
Appointment/hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Nonsexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (including overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/nonselection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/conditions of employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Findings after hearing	0	0	0	0	0	0	0	0	0	0	0	0
Appointment/hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty hours	0	0	0	0	0	0	0	0	0	0	0	0

(continued)

Table A.8.—continued

Findings of discrimination rendered by issue	Comparative data										Fiscal year 2020 (thru 9/30)	
	Previous fiscal year data											
	2015		2016		2017		2018		2019		#	%
	#	%	#	%	#	%	#	%	#	%		
Evaluation appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Nonsexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (including overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/nonselection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/conditions of employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Findings without hearing	0	0	0	0	0	0	0	0	0	0	0	0
Appointment/hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Nonsexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (including overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/nonselection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable accommodation	0	0	0	0	0	0	0	0	0	0	0	0

(continued)

Table A.8.—*continued*

Findings of discrimination rendered by issue	Comparative data										Fiscal year 2020 (thru 9/30)		
	Previous fiscal year data												
	2015		2016		2017		2018		2019				
	#	%	#	%	#	%	#	%	#	%	#	%	
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0	0
Terms/conditions of employment	0	0	0	0	0	0	0	0	0	0	0	0	0
Time and attendance	0	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0	0

Table A.9. Pending complaints filed in previous fiscal years by status

Pending complaints filed in previous fiscal years by status	Comparative data					Fiscal year 2020 (thru 9/30)
	Previous fiscal year data					
	2015	2016	2017	2018	2019	
Total complaints from previous fiscal years	14	20	19	11	15	7
Number complaints pending						
Investigation	3	3	1	2	7	0
ROI issued, pending complainant's action	0	1	0	0	1	0
Hearing	8	10	9	3	4	5
Final action	0	1	3	0	0	0
Appeal with EEOC Office of Federal Operations	2	2	2	4	2	1
Class Certification with EEOC Office of Federal Operations	0	0	0	0	1	1
District Court	2	4	4	2	1	2

Table A.10. Complaint investigations

Complaint investigations	Comparative data					Fiscal year 2020 (thru 9/30)
	Previous fiscal year data					
	2015	2016	2017	2018	2019	
Pending complaints where investigations exceed required time frames	0	0	1	1	2	1

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Disciplinary Actions Policy

Internal FR/Official Use



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

POLICY
STATEMENT

APPROVED BY
DATE

[Signature]
9/12/2019

Disciplinary Actions

- [Policy Statement](#)
- [Definitions](#)
- [Guidelines for Disciplinary Actions](#)
- [Reduction in Pay Because of a Disciplinary Action](#)
- [Responsibility](#)
- [Related Resources](#)

Policy Statement

The objective of this policy is to correct and deter employee misconduct to aid in the maintenance of an efficient and orderly work environment. This policy explains the types of discipline and the procedures that the Board will follow when disciplining an employee covered under this policy.¹

Definitions

Disciplinary action means an action intended to address an employee's misconduct that does not constitute an adverse action under the Board's [Adverse Action](#) policy.

Employee is an individual who works full-time or part-time and is appointed into Board service for a period of more than 90 calendar days. The term *employee* does not include members of the Board or those serving a provisional employment period under the Board's [Provisional Employment Period](#) policy, student aides, office assistants, student interns, co-op employees, or those serving in a term-limited position. The term employee also does not include an at-will employee—that is, an individual serving at the pleasure of the Board who may be discharged from Board service for any reason that is not unlawful.

Misconduct means any words or actions of an employee that evidence unacceptable or improper behavior. Examples of misconduct include, but are not limited to, workplace violence, violations of the Board's [Leave](#) policy, unprofessional communications, failure to follow a manager's directions, and prohibited use of Board IT resources.

¹ The [Adverse Action](#) policy explains the procedures the Board will follow when issuing a stronger discipline, such as a suspension of more than 14 calendar days, a reduction in grade or base pay, or a separation, to an employee covered under the Adverse Action policy. Employees who are not covered by this policy or the Adverse Action policy may be disciplined or separated but the Board is not required to provide the employee the procedural protections set out in this policy or the Adverse Action policy. If an employee is covered by the Provisional Employment Period (PEP) policy and is disciplined by being separated, the Board must comply with the protections provided under the PEP policy. The nature and seriousness of the employee's behavior and the employee's employment status will determine which policy the Board will use to discipline an employee.

Suspension, under this policy, is a disciplinary action whereby management places an employee in a temporary nonduty and nonpay status for up to 14 calendar days.

Guidelines for Disciplinary Actions

The Board may take a variety of disciplinary actions against employees. For example, the Board may orally counsel employees, require employees to attend training classes, reprimand or warn an employee in writing, require the employee to enter into a last chance agreement, reduce or withhold variable pay, or suspend the employee. When the Board disciplines an employee, the employee will be informed of the action resulting in discipline and be warned of the consequences of the same problem reoccurring.

If a manager determines that it is necessary to suspend an employee or otherwise reduce an employee's pay (including variable pay) as a disciplinary action, the manager must consult the [Employee Relations](#) (ER) section of Human Resources, Management Division before issuing the suspension or notice of reduction in pay.² The manager should provide ER with a description of the circumstances that gave rise to the need for discipline and any relevant documentation. The employee's manager, after consultation with ER, will determine whether to discipline and, if so, the appropriate discipline.³ The employee's manager may take into account past misconduct of the employee when making his or her decision.

When appropriate, managers may wish to inform the employee being disciplined of the availability of the Board's [Employee Assistance Program](#) (EAP).

Reduction in Pay Because of a Disciplinary Action

If a manager reduces an employee's pay in a notice of disciplinary action (for example, if an employee is suspended without pay or if an employee's variable pay or cash award is withheld under a notice of disciplinary action), the employee may appeal the reduction in pay to his or her division or office director, who will designate a division or office officer who did not make the original decision to hear the appeal (the appeal official). If the division or office director made the initial decision to discipline the employee, the chair of the Committee on Board Affairs will designate another division or office director to service as the appeal official.

The employee's appeal must be in writing and must be submitted within 10 working days of the date of the notice of the disciplinary action that reduces the employee's pay.⁴ The employee may submit additional material on appeal, but any such material must be submitted by the date the appeal is due. Any material the employee submits will be shared with the employee's management unless the appeal official does not rely on the information in reaching a decision or

² Employees who are subject to a reduction in pay because of a disciplinary action may be deemed ineligible to receive certain benefits and discretionary offerings that other employees who are otherwise in good standing may receive, such as academic assistance, or the ability to apply for internal job openings. Applicable policies include, but are not limited to, [Academic Assistance](#), [Alternative Work Arrangements](#), [Cash Compensation Program](#), [Teleworking](#), and [Vacant-Position Posting](#). Affected employees are encouraged to review applicable Board policies and consult with an employee relations specialist for more information.

³ If an employee engages in misconduct, this may also impact his or her annual performance rating.

⁴ Disciplinary actions that do not cause a reduction to an employee's pay are not appealable.

he or she determines that disclosing the information would create or exacerbate an employee relations issue.

Any appeal will not delay the effective date of the suspension or other reduction in pay. The appeal official will issue a written decision within 15 working days of receipt of the employee's appeal. The appeal official's decision is final and binding.⁵

Review of Documentation by Appeal Official

In reviewing the appeal, the appeal official has the discretion to conduct whatever investigation he or she deems appropriate, including relying solely on the appeal and any documentation that may have been presented with the appeal, or requesting supplementary information from the employee or from management.

Remedies

As a result of an appeal of a reduction in pay, the appeal official may uphold, overturn, or reduce the action but may not modify the reduction in pay in a way that is adverse to the employee, such as by increasing the reduction in pay (for example, by increasing a suspension).

Responsibility

The Board's [Human Resources](#) function has discretionary authority to administer and interpret this policy. The Board may review, update, and amend this policy at any time.

Related Resources

[Academic Assistance Policy](#)

[Adverse Action Policy](#)

[Alternative Work Arrangements Policy](#)

[Cash Compensation Program Policy](#)

[Leave Policy](#)

[Provisional Employment Period Policy](#)

[Teleworking Policy](#)

[Vacant-Position Posting Policy](#)

⁵ The appeal official, in consultation with ER, may extend the time limit for making an appeal or for issuing a written decision. Nothing in this policy provides for the right to a trial-type hearing that includes, for example, the examination of witnesses. The appeal process described above is the exclusive remedy for the appeal of disciplinary actions.

Adverse Action Policy

Internal FR/Official Use



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

POLICY
STATEMENT

APPROVED BY
DATE

La Van
9/12/2019

Adverse Action

- [Purpose](#)
- [Definitions](#)
- [Grounds for Adverse Action](#)
- [Adverse Action Procedures](#)
- [Interplay with Other Policies](#)
- [Implications of Adverse Actions on Benefits and Discretionary Offerings](#)
- [Actions Taken Pursuant to National Security](#)
- [Responsibility](#)
- [Related Resources](#)
- [Appendix—Proposing and Deciding Officials for Adverse Actions Involving Officers](#)

Purpose

This policy outlines the general circumstances under which the Board may take an adverse action against an employee and describes the procedures that will be followed when such an action is proposed and taken. Unless an action falls within the definition of an adverse action, the action is not covered by this policy. Actions not covered by this policy may be covered by other Board policies—for example, the [Disciplinary Actions](#) policy or the [Provisional Employment Period](#) policy.

Definitions

Adverse action means a discharge, removal, suspension without pay for a period of more than 14 calendar days, or a reduction in grade or base pay against an employee. All other actions do not constitute adverse actions. In addition, adverse actions do not include

- actions the employee voluntarily agrees to or takes on his or her own behalf;
- actions that reduce an employee's variable pay, bonuses, cash awards, or any other type of pay that does not constitute base pay;
- any action taken under the Board's [Workforce Reductions](#) policy (including separation or reduction in grade or pay); or
- actions taken to carry out a transfer of function(s) required by law or other actions required by applicable law.

Base pay means the employee's annual rate of basic pay. Base pay does not include variable pay, cash awards, lump-sum merit increases, sign-on bonuses, retention bonuses, shift differential, overtime pay, holiday pay, availability pay, unscheduled-duty pay, premium pay, closure pay, or any other type of pay that the Board does not treat as base pay.

Days refers to calendar, not working, days unless otherwise noted.

Direct threat means a significant risk of substantial harm to the health or safety of an individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an employee poses a direct threat is based on an individualized assessment of his or her present ability to safely perform the essential functions of his or her job.

Employee means an individual who works full-time or part-time and is appointed into Board service for a period of more than 90 calendar days. The term *employee* does not include members of the Board or those serving a provisional employment period, student aides, office assistants, student interns, co-op employees, or those serving in a term-limited position.¹ The term employee also does not include an at-will employee—that is, an individual serving at the pleasure of the Board who may be discharged from Board service for any reason that is not unlawful. An individual who provides services to the Board but who is not an employee as defined herein has no rights under this policy.

Misconduct means any words or actions of an employee that evidence unacceptable or improper behavior. Examples of misconduct include, but are not limited to, workplace violence, violations of the Board’s [Leave](#) policy, unprofessional communications, failure to follow a manager’s directions, and prohibited use of Board IT resources.

Officer means an employee who has been appointed by the Board to serve as a member of its official staff.

Performance deficiencies exist anytime an employee’s work or competency demonstration is not meeting expectations of the employee’s position and when improvement is needed for an employee’s performance to meet expectations.

Grounds for Adverse Actions

Adverse actions are taken to promote the integrity and efficiency of the Board. For example, an adverse action may be initiated against an employee on the basis of an employee’s performance deficiencies that result in the employee receiving a performance warning under the Board’s [Performance Warnings](#) policy. An adverse action may also be initiated against an employee on the basis of, for example, misconduct or a failure to meet job requirements (such as failing to maintain a required license or based on national security or employment-suitability considerations).

¹ Those serving a provisional employment period can be separated from employment at the will of the Board for any reason that is not unlawful, in accordance with the Board’s Provisional Employment policy. In addition, student aides, office assistants, student interns, co-op employees, and persons in term-limited positions serve at the will of the Board and may be disciplined or separated for any reason that is not unlawful. Furthermore, a person serving in a term-limited position may automatically be separated at the end of his or her term, unless a decision is made to extend the employee’s term. If the term is extended, the employee may also be separated at the end of his or her extended term.

Performance

The Board may take an adverse action against an employee if the employee fails to improve his or her performance to a level that meets expectations after receiving a performance warning under the Board's Performance Warnings policy. Divisions are responsible for notifying Employee Relations (ER) when the division first believes that an employee's behavior or performance is not meeting expectations. If an employee's performance deficiencies cause him or her not to meet the Board's performance expectations, the employee's manager, after consulting with ER, will issue the employee a written performance warning, as explained in the Performance Warnings policy. If, after a reasonable opportunity to improve, the employee fails to improve his or her performance to a level that meets the Board's expectations, the Board may initiate an adverse action against the employee.²

If the employee improves his or her performance after the delivery of a performance warning, the employee is required to sustain this improvement. If an employee does not sustain his or her improved performance in the areas previously identified for improvement, the Board may initiate an adverse action against the employee as a result of his or her failure to sustain improved performance.

Misconduct

In addition, the Board may take an adverse action against an employee as a result of his or her misconduct. A manager should consult with ER immediately if he or she believes an employee has committed misconduct. Whether a matter constitutes misconduct (as opposed to, for example, a performance concern) is determined by the Board in its sole discretion. In addition, whether the Board takes an adverse action, and the type of adverse action the Board takes against an employee for misconduct depends on the facts of the particular case, including whether the misconduct has caused the Board to lose trust or confidence in the employee's ability to carry out his or her job responsibilities and any other factors, which may be relevant to the Board's ability to carry out efficiently its business functions. Depending on the seriousness of the offense, one instance of misconduct may be sufficient to separate an employee from Board service. A performance warning will not be issued prior to separating or disciplining an employee for misconduct.

Failure to Meet Employment Requirements

The Board may also take an adverse action against an employee due to an employee's failure to meet certain employment requirements, such as national security considerations; not being legally authorized to work in the United States; being determined a direct threat to himself, herself, or others by the chief human capital officer (CHCO); not meeting an essential job requirement, such as an employee not being fit for duty; not passing a background investigation; or because of suitability concerns as explained in the Board's [Suitability](#) policy. In cases where the employee fails to meet an employment requirement or there are suitability concerns, the employee's division will initiate an adverse action against the employee and the employee will be provided with the procedural protections outlined in this policy.

² In determining what constitutes a reasonable opportunity to improve, divisions must consult with Employee Relations staff.

Adverse Action Procedures

Proposing an Adverse Action

An officer (the proposing official) in the employee's division must consult with ER prior to proposing an action. A division may not inform an employee of a proposed adverse action before consulting ER. After ER has reviewed and commented on the proposal, the proposing official will deliver the proposal to the employee (and such notice will be considered delivered on the date that it was delivered to the employee either in person, by certified mail or Federal Express, or similar method). At the same time, the proposing official will deliver the proposal to the head of the employing division or office (the deciding official). The [appendix](#) outlines the individuals who serve as the proposing and deciding officials if an officer is the subject of the adverse action. The employee shall be given an opportunity to respond to the proposal, as further described below.

Content of the proposal and notice to employee. The proposal must state the proposed action and the reason(s) for the proposed action.³ A copy of this policy must be attached to the proposal and the proposal must inform the employee

- of the time period to respond to the proposal, and if the employee chooses to respond, the response must be in writing;
- that an employee relations specialist is available to assist him or her; and
- that he or she is entitled to consult with, and be represented by, a personal representative of the employee's choice and at the employee's expense, at any stage in the adverse action process.

Procedures governing the employee's response to the proposal. An employee will be given 21 calendar days from the date of the proposal to respond to the proposal unless there is reasonable cause to believe that the employee may be guilty of a crime. In that case, the officer responsible for Employee Relations (ER Officer), or his or her designee, may reduce the response period to seven calendar days. The proposal will also set a meeting date and time between the employee and the deciding official when the employee may respond to the proposal. The meeting may be held in person at the Board's offices, or the deciding official may choose to conduct the meeting over the telephone or via video conference, at the deciding official's discretion. If the employee does not attend the meeting at the date and time established by the Board or declines the invitation, this policy does not provide a right to a meeting at a different date or time.

At any time, the proposing official may amend a proposed action that has been issued to an employee to include additional information in support of the proposed action, to reference subsequently occurring or discovered supporting evidence, to add additional bases for the

³ The notice will include at least the information necessary to satisfy due process. If an adverse action is based on performance, the proposing official need only attach the employee's prior performance warnings on which the action is based as well as an explanation of why performance did not meet expectations after delivery of the performance warning.

proposed action, or to increase the penalty of the proposed action for any of these reasons. The employee may be given additional time to respond to the proposed action, as amended.⁴ An employee's response to the proposed action must be made in writing. The employee's response must specifically state the reasons he or she believes the proposed action is incorrect and may include affidavits or any other relevant documentation. All documentation must be submitted with the employee's response.

Employee's status pending a decision. The proposing official, in consultation with the ER Officer, or his or her designee, may place the employee on administrative leave (with pay) from the date the employee is provided with the proposal, or at any time after that date, until the deciding official issues a decision on the proposal. An employee on administrative leave may have his or her access to things, such as the Board's buildings and electronic systems, restricted, but the employee will continue to receive the regular health and retirement benefits and pay (excluding overtime) he or she would have been paid if the employee had worked during the administrative-leave period.

An employee who is absent from work without pay at the time of the proposed adverse action will not be placed in a pay status while the deciding official's decision is pending, unless the employee requests and qualifies for paid leave or returns to duty. If the employee requests and qualifies for paid leave or returns to duty, the employee will be placed in a pay status from the date the leave request was made or the date the employee returned to duty. In addition, if an employee is absent from work and has applied for, or is receiving, short-term disability (STD) benefits at the time the adverse action is proposed, the employee will be paid in accordance with the Board's normal rules for administering STD claims/benefits while the deciding official's decision is pending. However, if the employee states that he or she is able to return to work, the employee will be placed on administrative leave with pay or returned to work while the deciding official's decision is pending.

Deciding Official's Decision on the Proposal

Within 30 calendar days after the employee responds to the proposed action, or not more than 30 calendar days after the time period for the employee's response expires, the deciding official shall notify the employee, the employee's representative (if any), and the proposing official in writing of his or her decision. The deciding official may, in reaching a decision, conduct whatever investigation he or she deems appropriate, including requesting supplementary information from the employee or the proposing official (or both).

The decision may sustain, reverse, or modify the proposing official's recommendation either in whole or in part. However, in no case may the deciding official increase the proposing official's recommended penalty. If the deciding official uncovers new and material information to support the proposal, and he or she intends to rely on that information in reaching a decision, the deciding official must describe the new information to the employee and the employee will be

⁴ An employee will be given additional time to respond to an amended adverse action if the Board determines that additional time is required to satisfy due process. If the Board determines to provide an employee with additional time to respond, the Board will inform the employee of the response period when the employee is provided with the amended action.

provided with an opportunity to respond.⁵ Information that refutes factual claims made by the employee in his or her response to the proposal is not necessarily considered new and material information to support the proposal. In addition, the deciding official may rely on information provided by the employee without providing the employee a new opportunity to respond.

If the decision is adverse to the employee, the deciding official shall notify the employee of the decision at or before the time the action will be made effective. The deciding official's decision shall be dated and shall inform the employee of the reason(s) for the decision, the effective date of the decision, and his or her right to appeal the decision. Any appeal will not delay the effective date of the adverse action.

Appeal

An employee may appeal the deciding official's decision to the chief operating officer (COO)⁶ or, if the COO made the initial adverse action determination or otherwise must abstain from making the decision, to an official designated by the chair of the Committee on Board Affairs (appeal official).⁷ The [appendix](#) outlines who serves as the appeal official in the case of an officer. As part of an employee's appeal, he or she may request a hearing. The employee must file an appeal with the appeal official no later than 21 calendar days after the date of the deciding official's decision. A written performance warning is not separately appealable.

Content of the appeal. The appeal must (1) be in writing, (2) state the specific reasons the adverse action is incorrect, and (3) state whether the employee is requesting a hearing. If the employee requests a hearing, the employee's appeal must state the names of any witnesses the employee wishes to call to testify at the hearing and why each witnesses' in-person testimony is relevant to the issues raised on appeal. If the employee does not name and specifically request the in-person testimony of any witnesses in his or her appeal, only the appealing employee will be allowed to testify at the hearing.

Hearing. If the employee requests a hearing, the COO will designate a hearing official who may be different than the appeal official.⁸ If the hearing official is a different person than the appeal official, the hearing official will present his or her findings and recommendations from the hearing to the appeal official. The hearing official will also determine the type of hearing and the scope of the hearing that will be provided.⁹ In all cases, the employee appealing the deciding

⁵ The amount of time that an employee will be given to respond to any new and material information will be the amount of time necessary to satisfy due process. The employee will be informed of his or her response period at the same time that the employee is provided with the new and material information.

⁶ The COO may designate the chief human capital officer (CHCO) to decide the appeal instead of the COO. However, if the COO made the initial determination to separate the employee or otherwise must abstain from deciding the appeal, the COO may not designate the CHCO to hear the appeal.

⁷ The COO must consult with the Legal Division regarding when such an official must be designated assigned. The chair of the Committee on Board Affairs may designate any Board officer who was not involved in the initial decision.

⁸ The hearing official will review the information the employee provides and determine what witnesses, if any, to allow to testify at the hearing.

⁹ The hearing will provide sufficient process to satisfy due-process requirements, as determined by the hearing official in consultation with the Legal Division.

official's decision will bear the burden of proving, by a preponderance of the evidence, that the deciding official's decision was erroneous.

Decision on appeal. Within 30 calendar days after the date of a timely appeal—or if a hearing is granted, within 30 calendar days after the hearing concludes—the appeal official shall notify the employee, the employee's representative (if any), the proposing official, and the deciding official of his or her decision in writing. The decision may sustain, reverse, or modify the deciding official's recommendation either in whole or in part. However, in no case may the appeal official increase the penalty imposed by the deciding official. In reaching a decision on appeal, the appeal official may only consider the written record before him or her as well as information that arises at or results from any statements made orally at the hearing. The decision must explain the basis for the decision. The decision on appeal shall be final and binding upon the employee and the Board.

Substitution of Proposing, Deciding, or Appeal, or Hearing Official

If any proposing, deciding, appeal, or hearing official is unavailable to take action or decides to abstain from taking action under this policy due to, for example, a conflict of interest or any other reason, the chair of the Committee on Board Affairs may designate an official to act in his or her place.¹⁰

Extension of Time Limits

At any stage of the process, the deciding official, appeal official, or hearing official, as appropriate, may extend the time limits indicated in the adverse action procedures by up to 30 calendar days. Extensions beyond 30 calendar days must be approved by the CHCO, in consultation with the deciding official, appeal official, or hearing official. In situations that require an extension of time, ER will inform the employee of such an extension.

Disclosure of Information

Ordinarily, any information the employee submits to the Board or that the Board provides to an employee during this process is not required to be kept confidential. However, the proposing, deciding, appeal, or hearing official may require an employee to agree to maintain the confidentiality of information provided at any stage during this process as a pre-condition to receiving such information if disclosure of such information would impinge on the privacy rights of other employees or would otherwise be impermissible under law or Board policy.

Interplay with Other Policies

An employee may not simultaneously challenge an action under this policy and under other applicable Board policies, except for the Board's [Equal Employment Opportunity](#) (EEO) policy. Accordingly, subject to that exception, if an adverse action is proposed, all actions under other Board policies that are based on the same set of facts as the proposed adverse action will be terminated. An employee may continue to pursue both an appeal under this Adverse Action policy and an action under the Board's EEO policy. If an employee wishes to challenge an

¹⁰ The proposing, deciding, and appeal, and hearing officials should consult with the Legal Division regarding when abstention is required.

adverse action under the Board’s EEO policy, he or she must initiate contact with an EEO counselor within 45 calendar days of the date of the deciding official’s decision on the adverse action. The filing of an EEO complaint does not delay the effective date of the adverse action.

Implications of Adverse Actions on Benefits and Discretionary Offerings

Employees who receive adverse actions may be deemed ineligible to receive certain benefits and discretionary offerings that other employees who are otherwise in good standing may receive, such as a merit increase, variable pay, academic assistance, or the ability to apply for internal job openings. An employee who receives an adverse action is encouraged to review applicable Board policies and consult with an employee relations specialist to discuss how the adverse action may affect any benefits or discretionary offerings.¹¹

Actions Taken Pursuant to National Security

Notwithstanding any other provisions of this policy, to the extent a proposed adverse action is based on information that is classified for national security reasons, the Board will provide an employee with as comprehensive and detailed a written explanation of the basis for the adverse action as the national security interests of the United States and other applicable law permit. In addition, the Board will provide an employee with the information an adverse action is based on only as permitted by national security interests and other applicable law.

Responsibility

The Board’s [Human Resources](#) function has the authority to administer and interpret this policy. This policy may be reviewed, updated, or amended at any time.

Related Resources

- [Disciplinary Actions Policy](#)
- [Equal Employment Opportunity Policy](#)
- [Leave Policy](#)
- [Performance Warnings Policy](#)
- [Provisional Employment Policy](#)
- [Suitability Policy](#)
- [Workforce Reductions Policy](#)

Appendix—Proposing and Deciding Officials for Adverse Actions Involving Officers

The following list names who the proposing and deciding officials are in the event of an adverse action against

¹¹ Applicable policies include, but are not limited to, [Academic Assistance](#), [Alternative Work Arrangements](#), [Cash Compensation Program](#), [Teleworking](#), and [Vacant-Position Posting](#).

1. The chief operating officer (COO) and division/office directors, except those listed under 2, and except the inspector general¹²
 - *Proposing Official*: Oversight governor
 - *Deciding Official*: Administrative governor (or if the administrative governor was the proposing official, the Vice Chair)¹³
 - *Appeal Official*: Full Board (excluding the proposing and deciding officials)

2. The director of the Management Division, director of the Division of Financial Management, program director of the Office of Diversity and Inclusion, director of the Division of Information Technology, chief data officer, and any other division or office director that the Board states, in writing, reports to the COO
 - *Proposing Official*: Chief operating officer
 - *Deciding Official*: Administrative governor
 - *Appeal Official*: Full Board (excluding the deciding official)

3. All other officers (other than the inspector general)
 - *Proposing Official*: Division/office director
 - *Deciding Official*: Oversight governor
 - *Appeal Official*: Administrative governor (or if the administrative governor was the deciding official, the Board's Vice Chair)¹⁴

The COO, division directors, and governors who are required to act as the proposing official, deciding official, or appeal official may consult with the CHCO and the assistant general counsel, as needed. In addition, if an officer requests a hearing, the COO will designate a hearing official who may be different than the appeal official. The hearing rules for officers will be the same as the hearing rules that apply to all other employees.

¹² The inspector general may only be removed under the terms and conditions specified under the Inspector General Act.

¹³ If the position of Vice Chair is vacant, the administrative governor shall appoint a governor to act in place of the Vice Chair.

¹⁴ As noted above, if the position of Vice Chair is vacant the administrative governor shall appoint a governor to act in place of the Vice Chair.

Equal Employment Opportunity Policy

Internal FR/Official Use



**BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM**

POLICY
STATEMENT

APPROVER / DATE

PATRICK
MCCLANAHAN

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PATRICK MCCLANAHAN
Date: 2020.07.22
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Equal Employment Opportunity

Policy Statement

The Board's policy is to provide equal opportunity in employment for all persons. Thus, consistent with applicable law, the Board prohibits discrimination in employment on the basis of race, color, religion, sex (including discrimination based on sexual orientation, gender identity, and pregnancy), national origin, age, disability, or genetic information and promotes the full realization of equal employment opportunity (EEO) through a continuing affirmative program. The Board also prohibits discrimination on the basis of any application, membership, or service in the uniformed services. Finally, the Board prohibits retaliation against any individual because they engaged in protected EEO activity, such as opposing discriminatory practices or participating in the discrimination-complaint process.

The Board strives to comply with the following statutes and any amendments thereof: the Civil Rights Act of 1964 (title VII), section 501 of the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967 (ADEA), the Equal Pay Act of 1963, the Genetic Information Nondiscrimination Act of 2008, and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). The Board's [Rules Regarding Equal Employment Opportunity](#) (the Board's EEO rules), 12 C.F.R. part 268, set forth the policies and procedures relating to the Board's policy to promote equal opportunity. In addition, plans, program objectives, and goals dealing with equal employment opportunity and affirmative action are set forth in the Board's EEO rules as well as in the Affirmative Employment Program Plan adopted by the Board (which is available through the Board's [Office of Diversity and Inclusion](#) (ODI)).

Complaint Processing

An employee or applicant for employment who believes that they have been subjected to discrimination or harassment on the basis of race, color, religion, sex, national origin, disability, age, or genetic information, or subject to retaliation for engaging in protected activity, may raise any such complaint with the Board's ODI as provided by the Board's EEO rules. The aggrieved person must initiate contact with an EEO counselor within 45 days of the matter alleged to be discriminatory, harassing or retaliatory, or in the case of a personnel action, within 45 days of the effective date of the action.

Complaints by employees regarding discrimination on the basis of any application, membership, or service in the uniformed services may be raised under the [Adjusting Work-Related Problems](#)

Internal FR/Official Use

policy.¹ This policy does not create any right to file a lawsuit or other legal action on the basis of discrimination on the basis of any application, membership, or service in the uniformed services.

Interaction with Other Policies

Allegations of discrimination or harassment on the grounds of race, color, sex, religion, national origin, age, disability, or genetic information, or of retaliation for engaging in protected activity, cannot be simultaneously raised under the Board's EEO rules and the Board's [Adjusting Work-Related Problems](#) policy. When an employee presents an allegation of discrimination on the grounds of race, color, sex, religion, national origin, age, disability, or genetic information, the allegation shall be processed under the Board's EEO rules, and any grievance regarding the same matter being processed through the Adjusting Work-Related Problems policy shall terminate.

Responsibility

The Board has assigned direct responsibility for implementation of its EEO policy to supervisors and managers. The [ODI director](#) is responsible for coordinating Boardwide implementation of EEO procedures and practices; advising on the Board's policies and practices in connection with federal EEO laws; implementing this and other Board policies related to EEO; coordinating the resolution of EEO complaints; and, if applicable, recommending corrective measures to management. The Human Resources Function of the Management Division is responsible for addressing complaints filed under the [Adjusting Work-Related Problems](#) policy that allege discrimination on the basis of any application, membership, or service in the uniformed services. This policy will be reviewed and updated as necessary.

Related Resources

[Adjusting Work-Related Problems](#) policy

Board's [Rules Regarding Equal Employment Opportunity](#)

Office of Diversity and Inclusion [EEO Resources page](#)

¹ Applicants for employment may raise complaints regarding discrimination on the basis of any application, membership, or service in the uniformed services with the Human Resources Function of the Management Division

Discriminatory Workplace Harassment Policy



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

POLICY
STATEMENT

APPROVED BY
DATE


9/24/18

Discriminatory Workplace Harassment

- Policy Statement
- Zero-Tolerance Policy

- Discriminatory Harassment
- Sexual Harassment
- Applicability of Policy
- Responsibility of All Employees with Regard to Discriminatory Harassment, Including Sexual Harassment
- Responsibility of All Supervisors and Managers with Regard to Discriminatory Harassment, Including Sexual Harassment
- Procedures for Reporting and Responding to Discriminatory Harassment, Including Sexual Harassment
- Appeals Process
- Responsibility for Policy
- References

Policy Statement

The Board's policy is to (1) provide all employees with a work environment that is free from discriminatory harassment, (2) thoroughly and promptly investigate all complaints of discriminatory harassment, and (3) effect appropriate discipline if discriminatory harassment is found to have occurred. Sexual harassment is one form of discriminatory harassment and is addressed more specifically later in this policy.

Zero-Tolerance Policy

Discriminatory harassment will not be tolerated. The Board's policy is to prevent any discriminatory harassment even if the behavior does not violate the law—that is, it is not objectively severe or pervasive. Because the Board wishes to prevent all discriminatory harassment and to encourage reporting of discriminatory harassment before it becomes severe or pervasive, the Board has established this policy both to encourage the reporting of discriminatory harassment and to clarify that any employee who engages in discriminatory harassment may face disciplinary action. The Board is committed to investigating any possible discriminatory harassment of which it learns, even if the harassed individual does not file an equal employment opportunity (EEO) complaint.

Discriminatory Harassment

Discriminatory harassment is verbal or physical conduct that demeans or shows hostility or aversion toward an individual because of his or her race, color, religion, sex,¹ sexual orientation, gender identity, national origin, age (40 or older), disability, genetic information, or because of retaliation for engaging in protected activity. Discriminatory harassment is against the law (that is, it violates title VII of the Civil Rights Act of 1964, section 501 of the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967, or the Genetic Information Nondiscrimination Act of 2008) when it has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive working environment. The conduct must be sufficiently severe or pervasive that it alters the conditions of employment and creates an environment that a reasonable person would find to be hostile or abusive. In addition, to constitute illegal harassment, there must be a basis for imputing liability to the Board.

Below are some examples of conduct that might constitute discriminatory harassment. The list is not all-inclusive; in addition, each situation must be considered in light of the specific facts and circumstances to determine if discriminatory harassment occurred. For example, an occasional remark that could be considered offensive by a particularly sensitive individual is unlikely to be considered discriminatory harassment under this policy; a pattern of such remarks, particularly after the individual has objected to them, would more likely be considered to be discriminatory harassment. By contrast, even a single use of an epithet or slur that would be widely considered offensive would be likely to be considered discriminatory harassment under this policy. A finding that discriminatory harassment occurred that violates this policy does not mean that illegal discriminatory harassment necessarily occurred.

Examples of Discriminatory Harassment

- Oral or written use of offensive epithets, slurs, or comments aimed at an individual or group that relate to their race, color, religion, sex, national origin, age (40 or older), disability, genetic information, or sexual orientation.
- Use of offensive gestures or display of graphic pictures or drawings which demean or show hostility or aversion toward an individual or group because of race, color, religion, sex, national origin, age (40 or older), disability, genetic information, or sexual orientation.
- Taunting on the basis of an individual's association with people of a particular race, color, religion, sex, national origin, age (40 or older), disability, genetic information, or sexual orientation.
- Intimidation through violence or threats of force or violence against an individual because of his or her race, color, religion, sex, national origin, age (40 or older), disability, genetic information, or sexual orientation.

¹ As used in title VII, the term *sex* encompasses both biological sex—that is, the biological differences between men and women—and gender. The term *gender* encompasses not only a person's biological sex but also the cultural and social aspects associated with masculinity and femininity. Sex discrimination thus includes gender stereotyping.

- Unfavorable treatment of an individual or group because of their race, color, religion, sex, *national origin*, age (40 or older), disability, genetic information, or sexual orientation.
- Ridiculing or mocking a person because of his or her race, color, religion, sex, *national origin*, age (40 or older), disability, genetic information, or sexual orientation.
- Making comments to an individual, or in an individual's hearing, that reflect stereotypes about that individual's race, color, religion, sex, *national origin*, age (40 or older), disability, genetic information, or sexual orientation.
- Sending unwelcome mail, voicemail, or email containing derogatory jokes or comments about an individual or group because of race, color, religion, sex, *national origin*, age (40 or older), disability, genetic information, or sexual orientation.²
- Treating people differently based on their protected characteristics can also be discriminatory harassment. For example, a supervisor who complains about his or her older employees' tardiness but allows workers under age 40 to come to work late without comment may be engaging in discriminatory harassment based on age. As another example, denying a transgender employee equal access to the common restroom facilities associated with the gender with which he or she identifies may constitute discriminatory harassment based on sex.

Sexual Harassment

Sexual harassment is a specific type of discriminatory harassment. Sexual harassment is defined as unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature directed to any person of the same or opposite sex when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. The courts and the Equal Employment Opportunity Commission (EEOC) have defined two types of illegal sexual harassment: (1) *quid pro quo* (a Latin phrase meaning giving or providing something in return for something else) and (2) hostile work environment.

Quid Pro Quo Sexual Harassment

Quid pro quo sexual harassment is the easiest to recognize. It occurs when one person seeks sexual favors from another person in return for something of value. The "something of value" offered in return might consist of almost any form of favorable treatment, such as receiving a good performance evaluation or being selected for promotion.

Quid pro quo sexual harassment does *not* require that the harasser clearly state what specific favors are expected for what specific return. Rather, as both the courts and the EEOC have

² Note that the Board's [Information Technology Resources Use policy](#) forbids employees from disseminating material that is offensive or harassing in nature, including material that disparages others on the basis of race, color, religion, sex, *national origin*, age (40 or older), disability, genetic information, or sexual orientation, even if such dissemination is not "unwelcome."

recognized, quid pro quo sexual harassment can be *implied* from the overall pattern of a person's actions—particularly if he or she occupies a position of authority or power over the other person.

Below are some examples of conduct that might constitute quid pro quo sexual harassment. The list is not all-inclusive; in addition, each situation must be considered in light of the specific facts and circumstances to determine whether sexual harassment occurred. A finding that sexual harassment occurred that violates this policy does not mean that illegal sexual harassment necessarily occurred.

Examples of Quid Pro Quo Sexual Harassment

- When an employee tells her supervisor that some people really don't like to have their necks and shoulders rubbed, he responds by saying, "Those who want to get ahead do."
- A manager pressures a subordinate employee to join her for dinner and dancing. When he declines, she tells him that he can't expect her to mentor him on the job if he's unwilling to spend time together after hours.
- After an employee resists her team leader's repeated suggestion that she travel with him so that they "can get to know each other better," he turns in a project evaluation rating her work "substandard."

Hostile Work Environment Sexual Harassment

Hostile work environment sexual harassment is often harder for employees and managers to recognize. It is usually found where a general pattern of workplace behavior exists that is *sexually oriented, pervasive, and severe*. Those descriptive terms have been defined in actual workplace situations as follows:

Sexually oriented behavior has been found to include

- letters, telephone calls, magazines, pictures, and objects of a sexual nature or content;
- the deliberate touching, brushing, cornering, or pinching of or leaning over a person;
- suggestive looks, comments, gestures, or whistles; or
- sexual jokes, teasing, remarks, and questions.

Pervasive behavior is behavior that is widespread, common, or repeated.

Behavior of a sexual nature is considered *severe* when it would be objectionable to a "reasonable person" within the circumstances.

Below are some examples of conduct that might constitute hostile work environment sexual harassment. The list is not all-inclusive; in addition, each situation must be considered in light of the specific facts and circumstances to determine whether sexual harassment occurred. A finding that sexual harassment occurred that violates this policy does not mean that illegal sexual harassment necessarily occurred.

Examples of Hostile Work Environment Sexual Harassment

- When an employee complains about the vulgar language and jokes that routinely fill the break room, her supervisor tells her to “lighten up and get used to it because that’s how boys behave.”
- After learning that an employee has separated from her husband and may be getting a divorce soon, a coworker has begun asking her out. After being repeatedly turned down, he has begun calling her at home to ask if she’d like him to “come over and help cure her loneliness.”
- A manager calls and sends instant messages to an employee in another division repeatedly asking him to go out with her, even after he tells her he’s not interested.

Applicability of Policy

This policy applies equally to any conduct that constitutes discriminatory harassment, whether sexual harassment or some other form of discriminatory harassment.

Responsibility of All Employees with Regard to Discriminatory Harassment, Including Sexual Harassment

It is the responsibility of all employees to refrain from engaging in, condoning, or tolerating discriminatory harassment. It is also employees’ responsibility to cooperate with any investigation or inquiry into allegations of discriminatory harassment.

Responsibility of All Supervisors and Managers with Regard to Discriminatory Harassment, Including Sexual Harassment

A supervisor or manager who witnesses or receives a report of actions that he or she believes may constitute discriminatory harassment under this policy must report the incident to the discriminatory harassment coordinator within the Board’s [Office of Diversity and Inclusion](#). This is true whether or not the manager or supervisor is in the direct reporting chain of the victim of the alleged discriminatory harassment. After receiving a report, the discriminatory harassment coordinator, or his or her designee, must follow the investigation procedures outlined below.

Procedures for Reporting and Responding to Discriminatory Harassment, Including Sexual Harassment

Any employee who believes he or she has been subjected to discriminatory harassment, or witnessed discriminatory harassment, is encouraged to promptly report the conduct and not remain silent. Employees are encouraged (but not required) to inform the offending person orally or in writing that such conduct is unwelcome and offensive and must stop. If employees do not wish to communicate directly with the offending person, or if such communication has been ineffective, employees are encouraged to report the discriminatory harassment to any of the following individuals: (1) the discriminatory harassment coordinator; (2) the offending individual’s supervisor or the harassed employee’s supervisor; (3) the offending individual’s division director or the harassed employee’s division director; (4) an Employee Relations staff member in the Human Resources Function of the Management Division; (5) the officer

responsible for Employee Relations; or (6) for employees in Human Resources, the assistant general counsel for Human Resources in the Legal Division. The names and telephone numbers of the individuals occupying the positions identified in (3), (4), and (5), above are available by calling the Human Resources hotline at extension 3737. When reporting a concern, employees should describe in detail the actions that are perceived to be discriminatorily harassing. An employee who reports discriminatory harassment to any of these individuals will be advised of this policy and that an investigation/inquiry will be opened by the discriminatory harassment coordinator as set forth in this policy.

Employees who allege discriminatory harassment or who cooperate in an investigation shall not be subjected to reprisal, recrimination, retaliation, or the threat of such action. Prompt reporting and employees' continued assistance is critical to allow rapid response by management and resolution of the objectionable behavior.

An employee who believes he or she has been subjected to discriminatory harassment always has the option to initiate the EEO complaint process by contacting an EEO counselor in the Office of Diversity and Inclusion within 45 days of the action perceived to be harassing. More detail regarding this process can be found in the "EEO Administrative Complaint Process" section of this policy; in addition, employees may wish to consult the Board's [Rules Regarding Equal Opportunity](#) at 12 CFR 268.³ If an employee initiates the EEO complaint process and reports that he or she has been subjected to discriminatory harassment, the EEO counselor will process the employee's EEO complaint and will also refer the allegation of discriminatory harassment to the Board's discriminatory harassment coordinator, who will open an investigation/inquiry into the matter as set forth in this policy. The Board will investigate all claims of discriminatory harassment, even those where the individual is unsure as to whether he or she wants to initiate the EEO complaint process or does not want to do so.

Office of Diversity and Inclusion Investigation/Inquiry Procedure

Any individual, including an employee of the Office of Diversity and Inclusion, who receives an allegation that he or she believes may constitute discriminatory harassment under this policy must report the allegation to the discriminatory harassment coordinator within the Office of Diversity and Inclusion. Upon receipt of such an allegation and in any case in which the harassed employee contacts the discriminatory harassment coordinator directly, the discriminatory harassment coordinator, or his or her designee, must

1. document the details of the allegation received, including the date upon which it was received, from whom it was received, the name of the harassed employee and the alleged harasser, and the date of the incident or incidents, and immediately notify the assistant general counsel for Human Resources in the Legal Division and the officer responsible for Employee Relations;

³ While a victim of harassment is free to initiate the EEO process in lieu of using the reporting process described in this policy, a victim of harassment who unreasonably fails to use available, effective complaint mechanisms designed to stop the harassment is less likely to prevail on a claim of discriminatory harassment, including hostile work environment sexual harassment.

2. within five days of being informed of the allegation, initiate contact with the individual who believes that he or she was subjected to discriminatory harassment and inform the individual, in writing, that the allegation will be investigated and that he or she may initiate the EEO complaint process by contacting an EEO counselor in the Office of Diversity and Inclusion within 45 days of the action perceived to be harassing;
3. assign an individual to promptly investigate the allegation, including documenting the investigation;
4. send the completed investigative report to the assistant general counsel for Human Resources in the Legal Division and the officer responsible for Employee Relations within two days after the discriminatory harassment coordinator receives the investigative report;
5. if the Office of Diversity and Inclusion believes discriminatory harassment occurred, refer the finding to Employee Relations, Legal, and the employing division so that they can determine the appropriate response, including the proposed action to be taken against the employee who engaged in discriminatory harassment;
6. ensure implementation of (including documenting of) management's response;
7. follow up with the victim to ensure management's response effectively addressed (ended) the discriminatory harassment (including documenting the employee's response); and
8. in the unusual event the employee indicates that discriminatory harassment has continued, identify additional management responses that may more effectively stop the harassing activity (e.g., taking more stringent action against the employee who engaged in discriminatory harassment).

In no case shall the individual being accused of harassment have supervisory authority over the individual who investigates the harassment or over the investigation more generally.

Within five days of being informed of an allegation of discriminatory harassment, the discriminatory harassment coordinator will, in consultation with the Legal Division, consider whether there are any immediate measures that should be taken to stop any harassing conduct and prevent further harassment, include granting interim relief to the victim of the harassing conduct before completing an investigation. Examples of such interim relief include making scheduling changes so as to avoid contact between the parties, transferring the alleged harasser, or placing the alleged harasser on administrative leave with pay pending the conclusion of the investigation.

Where an investigation has established that an employee engaged in discriminatory harassment, he or she may be subject to discipline or other appropriate management action, ranging from a letter of reprimand, to suspension without pay, to separation for cause, in accordance with the Board's [Adverse Action](#) policy or its [Disciplinary Actions](#) policy. Oral or written performance feedback may also be considered. Furthermore, the offending employee may also be required to attend training designed to address his or her harassing conduct. Where an investigation has

established that a manager condoned harassing conduct, ignored complaints of such conduct, or otherwise failed to properly carry out the responsibilities provided under this policy, he or she may be subject to disciplinary action and/or be required to attend training to assist the manager in identifying and preventing discriminatory harassment in the future.

Management will protect the confidentiality of all harassment allegations to the fullest extent possible. However, such information may have to be disclosed to management and employees with a need to know in order to carry out the purpose and intent of this policy. For example, management will need to disclose sufficient facts to the alleged harasser to enable the Board to investigate the allegation of harassment. In addition, information relating to the alleged harassment may have to be disclosed in any litigation involving the Board to which the information may be relevant or necessary.

EEO Administrative Complaint Process

An employee subjected to discriminatory harassment may also choose to initiate the administrative EEO process with the Board's Office of Diversity and Inclusion by contacting an EEO counselor within 45 days of the action perceived to be harassing. If an employee has reported an incident to the Board's discriminatory harassment coordinator in a timely manner and the investigation has not been completed before the 45-day period for filing an EEO complaint, the employee may request in writing that the program director of the Office of Diversity and Inclusion stay, for a specific period of time, the time for filing a complaint. The program director of the Office of Diversity and Inclusion will consider requests that stay the filing deadline for the time it takes to resolve any internal investigation or inquiry and will inform the employee in writing whether the stay has been granted and, if so, for how long.

An employee's right to initiate the EEO process does not diminish in any way management's responsibility to ensure that discriminatory harassment does not occur. Even if an employee chooses not to use the procedures in this policy to report harassing conduct and instead initiates the EEO process, the EEO counselor will also refer the matter to the discriminatory harassment coordinator so that the claim can be investigated, as explained above. An investigation by the discriminatory harassment coordinator does not supplant or limit in any way an employee's right to participate in the EEO process; rather, it ensures that the Board is able to obtain the information it needs to respond appropriately to all allegations of discriminatory harassment. For this same reason, if at any point during the EEO process an EEO counselor learns any facts or information relevant to an allegation of discriminatory harassment, the EEO counselor will promptly notify the discriminatory harassment coordinator.

The Board forbids retaliation against any employee who reports harassment to an EEO counselor or management official, files an EEO complaint, or otherwise participates in a discriminatory harassment investigation/inquiry.

Appeals Process

An employee subject to disciplinary action for conduct that violates this policy may appeal such disciplinary action under procedures set out in the Board's [Disciplinary Actions](#) policy or the [Adverse Action](#) policy, as appropriate.

Responsibility for Policy

The [Office of Diversity and Inclusion](#) is responsible for the administration and interpretation of this policy. Division directors will consult with the Office of Diversity and Inclusion as necessary in carrying out their responsibilities under this policy. This policy will be reviewed and updated as necessary.

References

- [Board's Rules Regarding Equal Opportunity](#)
- [Adverse Action Policy](#)
- [Disciplinary Actions Policy](#)
- [Information Technology Resources Use Policy](#)

