



FEDERAL RESERVE SYSTEM

12 CFR Part 268

[Docket No. R- 1630]

RIN 7100-AF 23

Rules Regarding Equal Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) is issuing its final rule to revise and expand its equal employment opportunity regulation to adopt recent changes the Equal Employment Opportunity Commission (EEOC) made to its rules. The Board's rule is intended to provide Board employees, applicants for employment, and others with the same substantive and procedural rights generally guaranteed to others under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, and the Rehabilitation Act and thus to comply with the spirit of those laws. The Board's rule also clarifies provisions related to Board employees' right to bring a claim before the Merit System Protection Board and the Federal Labor Relations Board.

DATES: Effective date: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Sheila Clark, Program Director, Office of Diversity and Inclusion, Board of Governors of the Federal Reserve System, (202) 452-2883.

SUPPLEMENTARY INFORMATION:

Background

The terms of Board employment are established by the Federal Reserve Act and rules established by the Board. 12 U.S.C. 244 (providing that the “employment, compensation, leave, and expenses” of Board employees “shall be governed solely by the provisions of this chapter and rules and regulations of the Board not inconsistent therewith.”). Although the Board has broad discretion to establish the terms of Board employment and can establish terms that deviate from the rights afforded to other government employees, the Board, as a matter of policy, has long aligned its employment practices with Federal laws that provide for equal employment opportunity. Pursuant to this policy, part 268 was issued by the Board to provide equal opportunity in employment in compliance with the spirit of Title VII of the Civil Rights Act of 1964 (Title VII), the Equal Pay Act, the Age Discrimination in Employment Act, and the Rehabilitation Act.

Overview of Proposal and Comments

On November 15, 2018, the Board issued a notice of proposed rulemaking with opportunity for public comment (NPR) in which it proposed amending part 268 in order to better align Board practices with those of the Equal Employment Opportunity Commission’s (EEOC’s) rules (83 FR 57343). The comment period

for the proposed rule has now closed and a total of six public comments were received.

None of the commenters suggested substantive revisions to the proposed rule. Four commenters expressed general support for the proposed rule. One commenter did not express support or opposition to the proposal, but rather, commented on the difficulty of forming a bank and finding payment processors for the bank.

The final commenter opposed the proposed rule because the commenter believes the rule would further “affirmative action” which the commenter opposes. The commenter did not specifically state which portions of the proposal the commenter opposed nor did the commenter suggest specific changes to the rule. However, the comment was interpreted as opposing the portion of the proposed rule which commits the Board to the goal of ensuring that twelve percent of its employees are individuals with disabilities and two percent of its employees are individuals with targeted disabilities. Because the provisions regarding disabled employees reflect the EEOC’s approach to employing disabled employees at other Federal agencies, the Board has decided to include these provisions in its final rule to ensure greater consistency between the Board’s Equal Employment Opportunity (EEO) practices and those of other Federal agencies.

The Board has considered all comments received. Because the majority of the commenters supported the proposed rule and because the changes are necessary to conform the Board’s EEO Regulation more closely to EEOC rules

and to clarify Board employees' rights to bring claims before the Merit System Protection Board and the Federal Labor Relations Board, the Board has adopted amendments to its Rules Regarding Equal Opportunity as proposed without substantive change.

As noted in the NPR, the revisions to part 268 are described below:

1. Amend § 268.101 to prohibit discrimination on the basis of genetic information to ensure compliance with the Genetic Information Nondiscrimination Act of 2008 (GINA) and to make conforming changes throughout to reflect this change.
2. Amend § 268.102(b)(3) to clarify that the Board follows EEOC guidance and management directives relating to advice for ensuring compliance with Title VII, the Equal Pay Act, the Age Discrimination in Employment Act, GINA, and the Rehabilitation Act.
3. Amend § 268.1 to remove references to hiring and granting information access since those rules will be incorporated into internal Board policies;
4. Amend § 268.106(a)(5) to adopt the EEOC's rule requiring dismissal of complaints that allege discrimination on the basis of proposed personnel actions or other preliminary steps unless the complainant has alleged that the proposal or preliminary step is retaliatory;
5. Amend § 268.107(e) to require Board staff, EEO investigators, and complainants to comply with the Board's program for the security of Federal Open Market Committee (FOMC) information when investigating and processing complaints that require access to FOMC information;

6. Amend § 268.107(g) to adopt the EEOC's rule on investigating complaints which requires agencies that have not completed an investigation within EEOC's time limits to send a notice to the complainant indicating the investigation is not complete, providing the date by which it will be completed, and explaining that the complainant has the right to request a hearing or file a lawsuit;
7. Amend § 268.201 to reflect updated address information for the EEOC;
8. Amend § 268.203 to more closely reflect the EEOC's approach to designing an affirmative action plan for individuals with disabilities;
9. Amend §§ 268.204 and 268.401 to reflect the EEOC's rules for processing class complaints;
10. Remove § 268.205 since its subject is not related to equal employment opportunity rules and since rules for hiring and granting access to information will be incorporated into the Board's internal policies;
11. Remove § 268.302 to eliminate procedures for handling mixed case complaints since mixed case complaints cannot be brought against the Board;
12. Amend § 268.403 to update address information and to incorporate the EEOC's rule that agencies submit appellate records and complaint files to the EEOC in a digital format that is acceptable to the EEOC;
13. Add a new § 268.405(b) to adopt the EEOC's procedures for class complaints which provide that an administrative judge's decision on the merits of a class complaint is a final decision which the Board can fully implement or appeal in its final action and to provide for expedited processing of appeals of decisions to accept or dismiss class complaints;
14. Amend § 268.502(c) to adopt the EEOC's rule which permits agencies up to 120 days to provide the particular relief the EEOC ordered; and

15. Amend § 268.710 to make changes to headings and titles to conform to the EEOC's rules and to the Board's functional titles.

Changes to Align with EEOC Rules

Except as described below, the above changes are necessary to align the Board's employment practices and complaint processing with the EEOC's rules. The revisions to part 268 align the Board's practices with changes the EEOC has made to its rules on Federal Sector Equal Employment Opportunity found at 29 CFR part 1614. In addition, the amendment to § 268.102(b)(3) clarifies that the Board follows Commission guidance and management directives relating to advice for ensuring compliance with Title VII, the Equal Pay Act, the Age Discrimination in Employment Act, GINA, and the Rehabilitation Act.

Complying with FOMC Security Requirements

Currently part 268 requires Board staff, EEO investigators, and complainants to protect confidential information of the Board but does not expressly address confidential FOMC information. Because it is conceivable that a complainant could require access to FOMC information, and because FOMC information is not solely Board information, the Board is amending § 268.107(e)(2) to expressly require those seeking access to FOMC information to agree to abide by the Program for Security of FOMC Information before being granted access to such information. This will ensure that FOMC information is protected in the same manner as other confidential Board information.

Remove Rules Related to Hiring and Granting Information Access

The revisions also eliminate § 268.205, which discusses the Board's rules for hiring non-citizens and for allowing access to confidential supervisory information (CSI) and FOMC information. The subject matter of this section is not relevant to the Board's equal employment opportunity rules. Thus, the revisions remove this section from the Board's equal employment opportunity regulation. Going forward, rules relating to the hiring of non-citizens and governing access to CSI and FOMC information will be incorporated in the Board's internal management policies.

Eliminate References to Mixed Case Complaints

The revisions eliminate § 268.302, which addressed procedures that apply to "mixed case complaints." A mixed case complaint is an employment complaint which raises violations of both EEO laws (over which the EEOC retains jurisdiction) and merit system principles, created by certain civil service laws over which the Merit Systems Protection Board (MSPB) retains jurisdiction. The Board is not subject to the MSPB's jurisdiction in light of its employment authorities under the Federal Reserve Act. Thus, the revisions remove this provision of the regulation.

Update Titles to Reflect the Board's Organizational Structure

The revisions to subpart H reflect changes to the Board's organizational structure since the last time the Board updated its EEO Regulation. Subpart H prohibits discrimination on the basis of disability in programs or activities conducted

by the Board and describes how to file complaints alleging such discrimination. The complaint process described in subpart H incorporates references to position titles that are no longer in use at the Board. For example, subpart H refers to the Equal Employment Opportunity Office, which has since been replaced by the Office of Diversity and Inclusion; to an EEO Program Director, which has since been replaced by the Office of Diversity and Inclusion Program Director; and to a Staff Director for Management, which has been replaced by the Chief Operating Officer. The amendments to subpart H replace the out-of-date titles with up-to-date information each place the rule refers to such titles.

I. Regulatory Analysis

A. Paperwork Reduction Act

Certain provisions of the rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521). In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board will address the information collection requirements associated with this rule under a separate Federal Register notice.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires a regulatory flexibility analysis only for rules that will have a significant impact on a substantial number of small entities. Because this rulemaking applies exclusively to Board employees and applicants for employment, the Regulatory Flexibility Act does not apply.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires each Federal banking agency to use plain language in all rules published after January 1, 2000. In light of this requirement, the Board believes this rule is presented in a simple and straightforward manner and is consistent with this “plain language” directive.

List of Subjects in 12 CFR Part 268

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Federal buildings and facilities, Genetic Information, Government employees, Individuals with disabilities, Religious discrimination, Sex discrimination, Wages.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR part 268 as set forth below:

PART 268 - RULES REGARDING EQUAL OPPORTUNITY

1. The authority citation for part 268 continues to read as follows:

Authority: 12 U.S.C. 244 and 248(i), (k) and (l).

2. In § 268.1, revise paragraph (b) to read as follows:

§ 268.1 Authority, purpose and scope.

(b) *Purpose and scope.* This part sets forth the Board's policy, program and procedures for providing equal opportunity to Board employees and applicants for employment without regard to race, color, religion, sex, national origin, age, disability, or genetic information. It also sets forth the Board's policy, program and procedures for prohibiting discrimination on the basis of disability in programs and activities conducted by the Board.

3. Revise § 268.101 to read as follows:

§ 268.101 General policy for equal opportunity.

(a) It is the policy of the Board to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, disability, or genetic information and to promote the full realization of equal opportunity in employment through a continuing affirmative program.

(b) No person shall be subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act (title VII) (42 U.S.C. 2000e et seq.), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 et seq.), the Equal Pay Act (29 U.S.C. 206(d)), the Rehabilitation Act (29 U.S.C. 791 et seq.), or the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff et

seq.) or for participating in any stage of administrative or judicial proceedings under those statutes.

4. Amend § 268.102 by:

a. Revising paragraph (a)(4);

b. Removing the semicolon at the end of paragraph (b)(1) and adding a period in its place;

c. Revising paragraphs (b)(3) and (4); and

d. Removing the semicolons at the ends of paragraphs (b)(5) and (6) and adding periods in their place.

The revisions read as follows:

§ 268.102 Board program for equal employment opportunity.

(a) * * *

(4) Communicate the Board's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, age disability, or genetic information, and solicit their recruitment assistance on a continuing basis;

* * * * *

(b) * * *

(3) Appraise its personnel operations at regular intervals to assure their conformity with the Board's program, this part and the instructions contained in the Commission's management directives relating to advice for ensuring

compliance with the provisions of title VII, the Equal Pay Act, the Age Discrimination in Employment Act, GINA, and the Rehabilitation Act.

(4) Designate a Director for Equal Employment Opportunity (EEO Programs Director), EEO Officer(s), and such Special Emphasis Program Managers/Coordinators (e.g., People with Disabilities Program, Federal Women's Program and Hispanic Employment Program), clerical and administrative support as may be necessary to carry out the functions described in this part in all organizational units of the Board and at all Board installations. The EEO Programs Director shall be under the immediate supervision of the Chair. The EEO Programs Director may also serve as the Director of the Office of Diversity and Inclusion.

* * * * *

5. In § 268.103, revise paragraph (a) to read as follows:

§ 268.103 Complaints of discrimination covered by this part.

(a) Individual and class complaints of employment discrimination and retaliation prohibited by title VII (discrimination on the basis of race, color, religion, sex and national origin), the ADEA (discrimination on the basis of age when the aggrieved person is at least 40 years of age), the Rehabilitation Act (discrimination on the basis of disability), the Equal Pay Act (sex-based wage discrimination), or GINA (discrimination on the basis of genetic information) shall be processed in accordance with this part. Complaints alleging retaliation

prohibited by the statutes listed in this paragraph (a) are considered to be complaints of discrimination for purposes of this part.

* * * * *

6. In § 268.104, revise paragraphs (a) introductory text and (d) to read as follows:

§ 268.104 Pre-complaint processing.

(a) Aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, or genetic information must consult a Counselor prior to filing a complaint in order to try to informally resolve the matter.

* * * * *

(d) Unless the aggrieved person agrees to a longer counseling period under paragraph (e) of this section, or the aggrieved person chooses an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the Counselor shall conduct the final interview with the aggrieved person within 30 days of the date the aggrieved person contacted the Board's Office of Diversity and Inclusion to request counseling. If the matter has not been resolved, the aggrieved person shall be informed in writing by the Counselor, not later than the thirtieth day after contacting the Counselor, of the right to file a discrimination complaint with the Board. This notice shall inform the complainant of the right to file a discrimination complaint within 15 days of receipt of the notice, of the appropriate official with whom to file a complaint and of the complainant's duty

to assure that the Programs Director is informed immediately if the complainant retains counsel or a representative.

7. In § 268.106, remove and reserve paragraph (a)(4) and revise paragraph (a)(5) to read as follows:

§ 268.106 Dismissals of complaints.

(a) ***

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

* * * * *

8. Amend § 268.107 by:

- a. Adding a sentence at the end of paragraph (e)(2); and
- b. Redesignating paragraph (g) as paragraph (h) and adding new paragraph (g).

The additions read as follows.

§ 268.107 Investigation of complaints.

* * * * *

(e) * * *

(2) *** Confidential supervisory information, as defined in 12 CFR 261.2(c), and other confidential information of the Board may be included in the investigative file by the investigator, the EEO Programs Director, or another appropriate officer of the Board, where such information is relevant to the

complaint. Neither the complainant nor the complainant's personal representative may make further disclosure of such information, however, except in compliance with the Board's Rules Regarding Availability of Information, 12 CFR part 261, and where applicable, the Board's Rules Regarding Access to Personal Information under the Privacy Act of 1974, 12 CFR part 261a. Any party or individual, including an investigator, who requires access to FOMC information must agree to abide by the Program for Security of FOMC Information before being granted access to such information.

* * * * *

(g) If the Board does not send the notice required in paragraph (f) of this section within the applicable time limits, it shall, within those same time limits, issue a written notice to the complainant informing the complainant that it has been unable to complete its investigation within the time limits required by paragraph (f) and estimating a date by which the investigation will be completed. Further, the notice must explain that if the complainant does not want to wait until the agency completes the investigation, he or she may request a hearing in accordance with paragraph (h) of this section, or file a civil action in an appropriate United States District Court in accordance with § 268.406(b). Such notice shall contain information about the hearing procedures.

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9. In § 268.108, revise the heading of paragraph (g) to read as follows:

§268.108 Hearings.

(g) *Summary judgement.* ***

10. In § 268.201, revise paragraphs (a) and (c) introductory text to read as follows:

§ 268.201 Age Discrimination in Employment Act.

(a) As an alternative to filing a complaint under this part, an aggrieved individual may file a civil action in a United States district court under the ADEA against the agency after giving the Commission not less than 30 days' notice of the intent to file such an action. Such notice must be filed in writing with EEOC, at P.O. Box 77960, Washington, DC 20013, or by personal delivery or facsimile within 180 days of the occurrence of the alleged unlawful practice.

* * * * *

(c) When an individual has filed an administrative complaint alleging age discrimination, administrative remedies will be considered to be exhausted for purposes of filing a civil action:

* * * * *

11. Revise § 268.203 to read as follows:

§ 268.203 Rehabilitation Act.

(a) *Definitions.* The following definitions apply for purposes of this section:

(1) The term *ADA* means title I of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 through 12117), title V of the Americans with Disabilities Act, as amended (42 U.S.C. 12201 through 12213), as it applies to employment, and the regulations of the Equal Employment Opportunity Commission implementing titles I and V of the ADA at 29 CFR part 1630.

(2) The term *disability* means disability as defined under 29 CFR 1630.2(g) through (l).

(3) The term *hiring authority that takes disability into account* means a hiring authority established under written Board policy that permits the Board to consider disability status during the hiring process.

(4) The term *personal assistance service provider* means an employee or independent contractor whose primary job functions include provision of personal assistance services.

(5) The term *personal assistance services* means assistance with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, and using the restroom.

(6) The term *Plan* means an affirmative action plan for the hiring, placement, and advancement of individuals with disabilities.

(7) [Reserved]

(8) The term *Section 501* means section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791).

(9) The term *targeted disability* means a developmental disability, such as cerebral palsy or autism spectrum disorder; a traumatic brain injury; deafness or serious difficulty hearing, benefiting from, for example, American Sign Language, communication access real-time translation (CART), hearing aids, a cochlear implant and/or other supports; blindness or serious difficulty seeing even when wearing glasses; missing extremities (such as an arm, leg, hand and/or foot); a significant mobility impairment benefiting from, for example, the utilization of a wheelchair; partial or complete paralysis; epilepsy or other seizure disorders; an intellectual disability (formerly described as mental retardation); a significant psychiatric disorder such as bipolar disorder, schizophrenia, post-traumatic stress disorder (PTSD), or major depression; dwarfism; or a significant disfigurement such as significant disfigurements caused by burns, wounds, accidents, or congenital disorders.

(10) The term *undue hardship* has the meaning set forth in 29 CFR part 1630.

(b) *Nondiscrimination.* The Board shall not discriminate on the basis of disability in regard to the hiring, advancement or discharge of employees, employee compensation, job training, or other terms, conditions, and privileges of employment. The standards used to determine whether Section 501 has been

violated in a complaint alleging employment discrimination under this part shall be the standards applied under the ADA.

(c) *Model employer.* The Board shall be a model employer of individuals with disabilities. The Board shall give full consideration to the hiring, advancement, and retention of qualified individuals with disabilities in its workforce. The Board shall also take affirmative action to promote the recruitment, hiring, and advancement of qualified individuals with disabilities, with the goal of eliminating under-representation of individuals with disabilities in the Board's workforce.

(d) *Affirmative action plan.* The Board shall adopt and implement a Plan that provides sufficient assurances, procedures, and commitments to provide adequate hiring, placement, and advancement opportunities for individuals with disabilities at all levels of Board employment. The Board's Plan must meet the following criteria:

(1) *Disability hiring and advancement program--(i) Recruitment.* The Plan shall require the Board to take specific steps to ensure that a broad range of individuals with disabilities, including individuals with targeted disabilities, will be aware of and be encouraged to apply for job vacancies when eligible. Such steps shall include, at a minimum -

(A) Use of programs and resources that identify job applicants with disabilities, including individuals with targeted disabilities, who are eligible to be appointed under a hiring authority that takes disability into account, examples of

which could include programs that provide the qualifications necessary for particular positions within the Board to individuals with disabilities, databases of individuals with disabilities who previously applied to the Board but were not hired for the positions they applied for, and training and internship programs that lead directly to employment for individuals with disabilities; and

(B) Establishment and maintenance of contacts (which may include formal agreements) with organizations that specialize in providing assistance to individuals with disabilities, including individuals with targeted disabilities, in securing and maintaining employment, such as American Job Centers, State Vocational Rehabilitation Agencies, the Veterans' Vocational Rehabilitation and Employment Program, Centers for Independent Living, and Employment Network service providers.

(ii) *Application process.* The Plan shall ensure that the Board has designated sufficient staff to handle any disability-related issues that arise during the application and selection processes, and shall require the Board to provide such individuals with sufficient training, support, and other resources to carry out their responsibilities under this section. Such responsibilities shall include, at a minimum -

(A) Ensuring that disability-related questions from members of the public regarding the agency's application and selection processes are answered promptly and correctly, including questions about reasonable accommodations needed by

job applicants during the application and selection processes and questions about how individuals may apply for appointment under hiring authorities that take disability into account;

(B) Processing requests for reasonable accommodations needed by job applicants during the application and placement processes, and ensuring that the Board provides such accommodations when required to do so under the standards set forth in 29 CFR part 1630;

(C) Accepting applications for appointment under hiring authorities that take disability into account, if permitted under written Board policy;

(D) If an individual has applied for appointment to a particular position under a hiring authority that takes disability into account, determining whether the individual is eligible for appointment under such authority, and, if so, forwarding the individual's application to the relevant hiring officials with an explanation of how and when the individual may be appointed, consistent with all applicable laws; and

(E) Overseeing any other Board programs designed to increase hiring of individuals with disabilities.

(iii) *Advancement program.* The Plan shall require the Board to take specific steps to ensure that current employees with disabilities have sufficient opportunities for advancement. Such steps may include, for example -

(A) Efforts to ensure that employees with disabilities are informed of and have opportunities to enroll in relevant training, including management training when eligible;

(B) Development or maintenance of a mentoring program for employees with disabilities; and

(C) Administration of exit interviews that include questions on how the Board could improve the recruitment, hiring, inclusion, and advancement of individuals with disabilities.

(2) *Disability anti-harassment policy.* The Plan shall require the Board to state specifically in its anti-harassment policy that harassment based on disability is prohibited, and to include in its training materials examples of the types of conduct that would constitute disability-based harassment.

(3) *Reasonable accommodation--(i) Procedures.* The Plan shall require the Board to adopt, post on its public Web site, and make available to all job applicants and employees in written and accessible formats, reasonable accommodation procedures that are easy to understand and that, at a minimum -

(A) Explain relevant terms such as “reasonable accommodation,” “disability,” “interactive process,” “qualified,” and “undue hardship,” consistent with applicable statutory and regulatory definitions, using examples where appropriate;

(B) Explain that reassignment to a vacant position for which an employee is qualified, and not just permission to compete for such position, is a reasonable accommodation, and that the Board must consider providing reassignment to a vacant position as a reasonable accommodation when it determines that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his or her current position;

(C) Notify supervisors and other relevant Board employees how and where they are to conduct searches for available vacancies when considering reassignment as a reasonable accommodation;

(D) Explain that an individual may request a reasonable accommodation orally or in writing at any time, need not fill out any specific form in order for the interactive process to begin, and need not have a particular accommodation in mind before making a request, and that the request may be made to a supervisor or manager in the individual's chain of command, the office designated by the Board to oversee the reasonable accommodation process, any Board employee connected with the application process, or any other individual designated by the Board to accept such requests;

(E) Include any forms the Board uses in connection with a reasonable accommodation request as attachments, and indicate that such forms are available in alternative formats that are accessible to people with disabilities;

(F) Describe the Board's process for determining whether to provide a reasonable accommodation, including the interactive process, and provide contact information for the individual or program office from whom requesters will receive a final decision;

(G) Provide guidance to supervisors on how to recognize requests for reasonable accommodation;

(H) Require that decision makers communicate, early in the interactive process and periodically throughout the process, with individuals who have requested a reasonable accommodation;

(I) Explain when the Board may require an individual who requests a reasonable accommodation to provide medical information that is sufficient to explain the nature of the individual's disability, his or her need for reasonable accommodation, and how the requested accommodation, if any, will assist the individual to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of the workplace;

(J) Explain the Board's right to request relevant supplemental medical information if the information submitted by the requester is insufficient for the purposes specified in paragraph (d)(3)(i)(I) of this section;

(K) Explain the Board's right to have medical information reviewed by a medical expert of the Board's choosing at the Board's expense;

(L) Explain the Board's obligation to keep medical information confidential, in accordance with applicable laws and regulations, and the limited circumstances under which such information may be disclosed;

(M) Designate the maximum amount of time the Board has, absent extenuating circumstances, to either provide a requested accommodation or deny the request, and explain that the time limit begins to run when the accommodation is first requested;

(N) Explain that the Board will not be expected to adhere to its usual timelines if an individual's health professional fails to provide needed documentation in a timely manner;

(O) Explain that, where a particular reasonable accommodation can be provided in less than the maximum amount of time permitted under paragraph (d)(3)(i)(M) of this section, failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act;

(P) Provide for expedited processing of requests for reasonable accommodations that are needed sooner than the maximum allowable time frame permitted under paragraph (d)(3)(i)(M) of this section;

(Q) Explain that, when all the facts and circumstances known to the Board make it reasonably likely that an individual will be entitled to a reasonable accommodation, but the accommodation cannot be provided immediately, the

Board shall provide an interim accommodation that allows the individual to perform some or all of the essential functions of his or her job, if it is possible to do so without imposing undue hardship on the Board;

(R) Inform applicants and employees how they may track the processing of requests for reasonable accommodation;

(S) Explain that, where there is a delay in either processing a request for or providing a reasonable accommodation, the Board must notify the individual of the reason for the delay, including any extenuating circumstances that justify the delay;

(T) Explain that individuals who have been denied reasonable accommodations have the right to file complaints pursuant to 12 CFR 268.105;

(U) Encourage the use of voluntary informal dispute resolution processes that individuals may use to obtain prompt reconsideration of denied requests for reasonable accommodation;

(V) Provide that the Board shall give the requester a notice consistent with the requirements of paragraph (d)(3)(iii) of this section at the time a request for reasonable accommodation is denied; and

(W) Provide information on how to access additional information regarding reasonable accommodation, including, at a minimum, Commission guidance and technical assistance documents.

(ii) *Cost of accommodations.* The Plan shall require the Board to take specific steps to ensure that requests for reasonable accommodation are not denied for reasons of cost, and that individuals with disabilities are not excluded from employment due to the anticipated cost of a reasonable accommodation, if the resources available to the Board as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation, would enable it to provide an effective reasonable accommodation without undue hardship. Such steps shall be reasonably designed to, at a minimum -

(A) Ensure that anyone who is authorized to grant or deny requests for reasonable accommodation or to make hiring decisions is aware that, pursuant to the regulations implementing the undue hardship defense at 29 CFR part 1630, all resources available to the agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation, are considered when determining whether a denial of reasonable accommodation based on cost is lawful; and

(B) Ensure that anyone authorized to grant or deny requests for reasonable accommodation or to make hiring decisions is aware of, and knows how to arrange for the use of, Board resources available to provide the accommodation, including any centralized fund the Board may have for that purpose.

(iii) *Notification of basis for denial.* The Plan shall require the Board to provide a job applicant or employee who is denied a reasonable accommodation

with a written notice at the time of the denial, in an accessible format when requested, that -

(A) Explains the reasons for the denial and notifies the job applicant or employee of any available internal appeal or informal dispute resolution processes;

(B) Informs the job applicant or employee of the right to challenge the denial by filing a complaint of discrimination under this part;

(C) Provides instructions on how to file such a complaint; and

(D) Explains that, pursuant to 12 CFR 268.105, the right to file a complaint will be lost unless the job applicant or employee initiates contact with an EEO Counselor within 45 days of the denial, regardless of whether the applicant or employee participates in an informal dispute resolution process.

(4) *Accessibility of facilities and technology--(i) Notice of rights.* The Plan shall require the Board to adopt, post on its public Web site, and make available to all employees in written and accessible formats, a notice that -

(A) Explains their rights under Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794d, concerning the accessibility of agency technology, and the Architectural Barriers Act, 42 U.S.C. 4151 through 4157, concerning the accessibility of agency building and facilities;

(B) Provides contact information for a Board employee who is responsible for ensuring the physical accessibility of the Board's facilities under the

Architectural Barriers Act of 1968, and a Board employee who is responsible for ensuring that the electronic and information technology purchased, maintained, or used by the agency is readily accessible to, and usable by, individuals with disabilities, as required by Section 508 of the Rehabilitation Act of 1973; and

(C) Provides instructions on how to file complaints alleging violations of the accessibility requirements of the Architectural Barriers Act of 1968 and Section 508 of the Rehabilitation Act of 1973.

(ii) *Assistance with filing complaints at other agencies.* If the Board's investigation of a complaint filed under Section 508 of the Rehabilitation Act of 1973 or the Architectural Barriers Act of 1968 shows that a different entity is responsible for the alleged violation, the Plan shall require the Board to inform the individual who filed the complaint where he or she may file a complaint against the other entity, if possible.

(5) *Personal assistance services allowing employees to participate in the workplace--(i) Obligation to provide personal assistance services.* The Plan shall require the Board to provide an employee with, in addition to professional services required as a reasonable accommodation under the standards set forth in 29 CFR part 1630, personal assistance services during work hours and job-related travel if -

(A) The employee requires such services because of a targeted disability;

(B) Provision of such services would, together with any reasonable accommodations required under the standards set forth in 29 CFR part 1630, enable the employee to perform the essential functions of his or her position; and

(C) Provision of such services would not impose undue hardship on the Board.

(ii) *Service providers.* The Plan shall state that personal assistance services required under paragraph (d)(5)(i) of this section must be performed by a personal assistance service provider. The Plan may permit the Board to require personal assistance service providers to provide personal assistance services to more than one individual. The Plan may also permit the Board to require personal assistance service providers to perform tasks unrelated to personal assistance services, but only to the extent that doing so does not result in failure to provide personal assistance services required under paragraph (d)(5)(i) of this section in a timely manner.

(iii) *No adverse action.* The Plan shall prohibit the Board from taking adverse actions against job applicants or employees based on their need for, or perceived need for, personal assistance services.

(iv) *Selection of personal assistance service providers.* The Plan shall require the Board, when selecting someone who will provide personal assistance services to a single individual, to give primary consideration to the individual's preferences to the extent permitted by law.

(v) *Written procedures.* The Plan shall require the Board to adopt, post on its public Web site, and make available to all job applicants and employees in written and accessible formats, procedures for processing requests for personal assistance services. The Board may satisfy the requirement in this paragraph (d)(5)(v) by stating, in the procedures required under paragraph (d)(3)(i) of this section, that the process for requesting personal assistance services, the process for determining whether such services are required, and the Board's right to deny such requests when provision of the services would pose an undue hardship, are the same as for reasonable accommodations.

(6) *Utilization analysis--(i) Current utilization.* The Plan shall require the Board to perform a workforce analysis annually to determine the percentage of its employees at each grade and salary level who have disabilities, and the percentage of its employees at each grade and salary level who have targeted disabilities.

(ii) *Source of data.* For purposes of the analysis required under paragraph (d)(6)(i) of this section an employee may be classified as an individual with a disability or an individual with a targeted disability on the basis of -

(A) The individual's self-identification as an individual with a disability or an individual with a targeted disability on a form, including but not limited to the Office of Personnel Management's Standard Form 256, which states that the information collected will be kept confidential and used only for statistical purposes, and that completion of the form is voluntary;

(B) Records relating to the individual's appointment under a hiring authority that takes disability into account, if applicable; and

(C) Records relating to the individual's requests for reasonable accommodation, if any.

(iii) *Data accuracy.* The Plan shall require the Board to take steps to ensure that data collected pursuant to paragraph (d)(6)(i) of this section are accurate.

(7) *Goals--(i) Adoption.* The Plan shall commit the Board to the goal of ensuring that -

(A) No less than 12% of employees who have salaries equal to or greater than employees at the GS-11, step 1 level in the Washington, DC locality, are individuals with disabilities;

(B) No less than 12% of employees who have salaries less than employees at the GS-11, step 1 level in the Washington, DC locality, are individuals with disabilities;

(C) No less than 2% of employees who have salaries equal to or greater than employees at the GS-11, step 1 level in the Washington, DC locality, are individuals with targeted disabilities; and

(D) No less than 2% of employees who have salaries less than employees at the GS-11, step 1 level in the Washington, DC locality, are individuals with targeted disabilities.

(ii) *Progression toward goals.* The Plan shall require the Board to take specific steps that are reasonably designed to gradually increase the number of persons with disabilities or targeted disabilities employed at the Board until it meets the goals established pursuant to paragraph (d)(7)(i) of this section.

Examples of such steps include, but are not limited to -

(A) Increased use of hiring authorities that take disability into account to hire or promote individuals with disabilities or targeted disabilities, as applicable;

(B) To the extent permitted by applicable laws, consideration of disability or targeted disability status as a positive factor in hiring, promotion, or assignment decisions;

(C) Disability-related training and education campaigns for all employees in the Board;

(D) Additional outreach or recruitment efforts;

(E) Increased efforts to hire and retain individuals who require supported employment because of a disability, who have retained the services of a job coach at their own expense or at the expense of a third party, and who may be given permission to use the job coach during work hours as a reasonable accommodation without imposing undue hardship on the Board; and

(F) Adoption of training, mentoring, or internship programs for individuals with disabilities.

(8) *Recordkeeping.* The Plan shall require the Board to keep records that it may use to determine whether it is complying with the nondiscrimination and affirmative action requirements imposed under Section 501, and to make such records available to the Commission upon the Commission's request, including, at a minimum, records of -

(i) The number of job applications received from individuals with disabilities, and the number of individuals with disabilities who were hired by the Board;

(ii) The number of job applications received from individuals with targeted disabilities, and the number of individuals with targeted disabilities who were hired by the Board;

(iii) All rescissions of conditional job offers, demotions, and terminations taken against applicants or employees as a result of medical examinations or inquiries;

(iv) All Board employees hired under special hiring authority for person with certain disabilities, and each such employee's date of hire, entering grade level, probationary status, and current grade level;

(v) The number of employees appointed under special hiring authority for persons with certain disabilities who successfully completed the Board's Provisional Employment period and the number of such employees who were terminate prior to the end of their Provisional Employment period; and

(vi) Details about each request for reasonable accommodation including, at a minimum -

(A) The specific reasonable accommodation requested, if any;

(B) The job sought by the requesting applicant or held by the requesting employee;

(C) Whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment;

(D) Whether the request was granted (which may include an accommodation different from the one requested) or denied;

(E) The identity of the deciding official;

(F) If denied, the basis for such denial; and

(G) The number of days taken to process the request.

(e) *Reporting--(1) Submission to the Commission.* On an annual basis the Board shall submit to the Commission at such time and in such manner as the Commission deems appropriate -

(i) A copy of its current Plan;

(ii) The results of the two most recent workforce analyses performed pursuant to paragraph (d)(6) of this section showing the percentage of employees with

disabilities and employees with targeted disabilities in each of the designated pay groups;

(iii) The number of individuals appointed to positions within the Board under special hiring authority for persons with certain disabilities during the previous year, and the total number of employees whose employment at the Board began by appointment under special hiring authority for persons with certain disabilities; and

(iv) A list of changes made to the Plan since the prior submission, if any, and an explanation of why those changes were made.

(2) *Availability to the public.* The Board shall make the information submitted to the Commission pursuant to paragraph (e)(1) of this section available to the public by, at a minimum, posting a copy of the submission on its public Web site and providing a means by which members of the public may request copies of the submission in accessible formats.

12. In § 268.204, revise paragraphs (i) through (k) and the third sentence of paragraph (l)(3) to read as follows:

§ 268.204 Class complaints.

* * * * *

(i) *Decisions.* The administrative judge shall transmit to the agency and class agent a decision on the complaint, including findings, systemic relief for the class and any individual relief, where appropriate, with regard to the personnel action or

matter that gave rise to the complaint. If the administrative judge finds no class relief appropriate, he or she shall determine if a finding of individual discrimination is warranted and if so, shall order appropriate relief.

(j) *Board final action.* (1) Within 60 days of receipt of the administrative judge's decision on the complaint, the Board shall take final action by issuing a final order. The final order shall notify the class agent whether or not the Board will fully implement the decision of the administrative judge and shall contain notice of the class agent's right to appeal to the Commission, the right to file a civil action in Federal district court, the name of the proper defendant in any such lawsuit, and the applicable time limits for appeals and lawsuits. If the final order does not fully implement the decision of the administrative judge, then the Board shall simultaneously file an appeal in accordance with § 268.403 and append a copy of the appeal to the final order. A copy of EEOC Form 573 shall be attached to the final order.

(2) If the Board does not issue a final order within 60 days of receipt of the administrative judge's decision, then the decision of the administrative judge shall become the final action of the Board.

(3) A final order on a class complaint shall, subject to subpart E of this part, be binding on all members of the class and the Board.

(k) *Notification of final action.* The Board shall notify class members of the final action and the relief awarded, if any, through the same media employed to give notice of the existence of the class complaint. The notice, where appropriate,

shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the Board within 10 days of the transmittal of the final action to the agent.

(1) * * *

(3) * * * The claim must include a specific detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that this discriminatory action took place within the period of time for which class-wide discrimination was found in the final order. * * *

§ 268.205 [Removed and Reserved]

13. Remove and reserve § 268.205.

§ 268.302 [Removed and Reserved]

14. Remove and reserve §268.302.

15. In § 268.401, revise paragraph (c) to read as follows:

§ 268.401 Appeals to the Equal Employment Opportunity Commission.

* * * * *

(c) A class agent or the Board may appeal an administrative judge's decision accepting or dismissing all or part of a class complaint; a class agent may appeal the Board's final action or the Board may appeal an administrative judge's decision on a class complaint; a class member may appeal a final decision on a claim for individual relief under a class complaint; and a class member, a class

agent or the Board may appeal a final decision on a petition pursuant to § 268.204(g)(4).

16. In § 268.403, revise paragraph (a) and add paragraph (g) to read as follows:

§ 268.403 How to appeal.

(a) The complainant, the Board, agent or individual class claimant (hereinafter appellant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at PO Box 77960, Washington, DC 20013, or electronically, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition, and should indicate what is being appealed.

* * * * *

(g) The Board will submit appeals, complaint files, and other filings to the Commission's Office of Federal Operations in a digital format acceptable to the Commission, absent a showing of good cause why the Board cannot submit digital records. Appellants are encouraged, but not required, to submit digital appeals and supporting documentation to the Commission's Office of Federal Operations in a format acceptable to the Commission.

17. Revise § 268.405 to read as follows:

§ 268.405 Decisions on appeals.

(a) The Office of Federal Operations, on behalf of the Commission, shall issue a written decision setting forth its reasons for the decision. The Commission shall dismiss appeals in accordance with §§ 268.106, 268.403(c) and 268.408. The decision shall be based on the preponderance of the evidence. The decision on an appeal from the Board's final action shall be based on a de novo review, except that the review of the factual findings in a decision by an administrative judge issued pursuant to § 268.108(i) shall be based on a substantial evidence standard of review. If the decision contains a finding of discrimination, appropriate remedy(ies) shall be included and, where appropriate, the entitlement to interest, attorney's fees or costs shall be indicated. The decision shall reflect the date of its issuance, inform the complainant of his or her civil action rights, and be transmitted to the complainant and the Board by first class mail.

(b) The Office of Federal Operations, on behalf of the Commission, shall issue decisions on appeals of decisions to accept or dismiss a class complaint issued pursuant to § 268.204(d)(7) within 90 days of receipt of the appeal.

(c) A decision issued under paragraph (a) of this section is final within the meaning of § 268.406 unless the Board issues a final decision under paragraph (d) of this section or unless a timely request for reconsideration is filed by a party to the case. A party may request reconsideration within 30 days of receipt of a decision of the Commission, which the Commission in its discretion may grant, if the party demonstrates that:

(1) The appellate decision involved a clearly erroneous interpretation of material fact or law; or

(2) The decision will have a substantial impact on the policies, practices, or operations of the Board.

(d) The Board, within 30 days of receiving a decision of the Commission, may issue a final decision based upon that decision, which shall be final within the meaning of § 268.406.

18. In § 268.502, revise paragraphs (b)(2) and (c) to read as follows:

§ 268.502 Compliance with final Commission decisions.

* * * * *

(b) * * *

(2) When the Board requests reconsideration, it may delay the payment of any amounts ordered to be paid to the complainant until after the request for reconsideration is resolved. If the Board delays payment of any amount pending the outcome of the request to reconsider and the resolution of the request (including under § 268.405(d)) requires the Board to make the payment, then the Board shall pay interest from the date of the original appellate decision until payment is made.

* * *

(c) When no request for reconsideration or final decision under § 268.405(d) is filed or when a request for reconsideration is denied, the Board shall provide the

relief ordered and there is no further right to delay implementation of the ordered relief. The relief shall be provided in full not later than 120 days after receipt of the final decision unless otherwise ordered in the decision.

19. In § 268.504, revise paragraph (c) to read as follows:

§ 268.504 Compliance with settlement agreements and final actions.

* * * * *

(c) Prior to rendering its determination, the Commission may request that the parties submit whatever additional information or documentation it deems necessary or may direct that an investigation or hearing on the matter be conducted. If the Commission determines that the Board is not in compliance with a decision or a settlement agreement, and the noncompliance is not attributable to acts or conduct of the complainant, it may order such compliance with the decision or settlement agreement, or, alternatively, for a settlement agreement, it may order that the complaint be reinstated for further processing from the point processing ceased. Allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints under § 268.105 or § 268.204, as appropriate, rather than under this section.

20. Amend § 268.710 by:

- a. Removing the acronym “EEO” each place it appears;
- b. Removing the words “Staff Director for Management” each place they appear and add in their place the words “Chief Operating Officer”; and
- c. Revising paragraphs (c) and (d)(4).

The revisions read as follows:

§268.710 Compliance procedures.

* * * *

(c) *Responsible official.* The Office of Diversity and Inclusion Programs Director (“Programs Director”) shall be responsible for coordinating implementation of this section.

(d) * * *

(4) *How to file.* Complaints may be delivered or mailed to the Administrative Governor, the Chief Operating Officer, the Programs Director, the Federal Women's Program Manager, the Hispanic Employment Program Coordinator, or the People with Disabilities Program Coordinator. Complaints should be sent to the Programs Director, Office of Diversity and Inclusion, Board of Governors of the Federal Reserve System, 20th and C Street NW., Washington, DC 20551. If any Board official other than the Programs Director receives a complaint, he or she shall forward the complaint to the Programs Director.

By order of the Board of Governors of the Federal Reserve System, May 29, 2019.

Ann Misback,
Secretary of the Board.

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