



FDIC DIRECTIVE 2400.02

Anti-Retaliation and Whistleblower Protection Rights

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PURPOSE

This Directive informs employees of the FDIC's commitment to whistleblower protection rights and maintaining a workplace free of retaliation for all forms of legally protected activities, communicating responsibilities for implementing this Directive, and providing guidance to employees on reporting retaliation.

SCOPE

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

AUTHORITIES

- Public Law 95-454, 92 Stat. 1111, Civil Service Reform Act
- Title 5, U.S.C., Section 403(d), 407, Inspector General Act, as amended
- Title 5, U.S.C., Section 2301 note, The Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002, as amended by the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (Cummings Act)
- Title 5, U.S.C., Section 2302(b)(8)-(9), The Whistleblower Protection Act and the Whistleblower Protection Enhancement Act
- Title 5, U.S.C., Section 7102, Federal Service Labor-Management Relations Statute
- Title 12, United States Code (U.S.C.), Section 1831j, Depository Institution Employee Protection Remedy

- Title 41, U.S.C., Section 4712, Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information
- [Nationwide Agreement between the Federal Deposit Insurance Corporation & National Treasury Employees Union](#)

FORMS

None.

SUMMARY OF CHANGES

This Directive supersedes FDIC Directive 2400.02, Whistleblower Protection Rights, dated July 16, 2019.

REVISION, dated January 6, 2025

This Directive has been revised to:

- More broadly notify employees of their various rights against retaliation; and
- Discuss the actions the FDIC will take to encourage a workplace where employees may exercise their legal rights freely and may freely disclose suspected violations of any law, rule, or regulation or any waste, fraud, abuse or misconduct in FDIC operations, onsite and offsite, without fear of retaliation.

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BACKGROUND

The FDIC is committed to maintaining a workplace that protects the rights of employees to participate in legally protected activities and that is free from harassment and discrimination.

In accordance with the Whistleblower Protection Act and the Whistleblower Protection Enhancement Act (5 U.S.C. Sections 2302(b)(8)-(9)), as amended, FDIC employees and applicants for employment at the FDIC may disclose information that the individual reasonably believes shows a violation of a law, rule, or regulation or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. Such information may be disclosed to individuals permitted under law, including FDIC management officials, the FDIC Office of Inspector General, the FDIC Office of Professional Conduct, the U.S. Office of Special Counsel, or Congress. These individuals are protected from retaliatory action or reprisal for disclosing this information and for engaging in certain protected activities.

In accordance with the Notification and Federal Employee Anti-Discrimination and Retaliation Act (No FEAR Act) of 2002, FDIC employees, applicants for employment, and former employees, have the right to participate in legally protected activities, report incidents of harassment and discrimination, and participate in investigations and proceedings without fear of retaliation.

The Depository Institution Employee Protection Remedy (12 U.S.C. Section 1831j) addresses reprisal for whistleblowing activities and is subject to the procedures of the Civil Service Reform Act (Public Law 95-454, 92 Stat. 1111).

The Inspector General Act (5 U.S.C. Sections 403(d), 407), as amended, prohibits reprisal against any employee for making a complaint or disclosing information to the Office of Inspector General (OIG) and requires each federal agency to designate a Whistleblower Protection Coordinator, located in the agency's OIG.

Federal law (41 U.S.C. Section 4712) further protects a contractor, subcontractor, grantee, subgrantee, or personal services contractor from being discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the individual reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of a law, rule, or regulation related to a federal contract, including the competition for or negotiation of a contract.

POLICY

It is the policy of the FDIC to prohibit retaliation against employees, contractors, and applicants for employment when they engage in legally protected activities. Examples of retaliation for engaging in legally protected activities may include, but are not limited to, firing, demoting, denying a promotion, disciplining, intimidating, threatening, reassigning, reducing pay, unsupported negative evaluations, or any other actions that would dissuade employees from engaging in protected activity. The FDIC will investigate claims of retaliation and will discipline any employee found to have engaged in retaliatory activity prohibited by this Directive. FDIC employees, contractors, and applicants for employment are encouraged to exercise their own legal rights freely without fear of retaliation.

A. Legally Protected Activities

The following are legally protected activities:

1. Reporting harassment or other interpersonal misconduct, including to the Office of Professional Conduct (OPC) (FDIC Directive 2710.03, Anti-Harassment Program);
2. Opposing discrimination reasonably believed as unlawful and participating in Equal Employment Opportunity (EEO) processes that promote and ensure equal employment opportunity (FDIC Directives 2710.01, Equal Opportunity Policy; 2710.02, EEOC Discrimination Complaint Procedures; 2710.04, FDIC Discrimination Complaint Procedures; and 2710.05, Reasonable Accommodation Program).

For example, it is unlawful to retaliate against applicants or employees for:

- a. Filing or being a witness in an EEO charge, complaint, investigation, or lawsuit;
 - b. Communicating with a supervisor or manager, or the Office of Equal Employment Opportunity (OEEO), about employment discrimination;
 - c. Refusing to follow orders that would result in discrimination;
 - d. Objecting to or rebutting sexual advances or intervening to protect others;
 - e. Requesting accommodation of a disability, for a religious practice, or due to pregnancy; or
 - f. Asking managers or co-workers about salary information to uncover potentially discriminatory wages.
3. Exercising employee rights pursuant to the Federal Service Labor Management Relations Statute and rights provided to employees under the FDIC's Collective

Bargaining Agreement (5 U.S.C. Section 7102, FDIC Collective Bargaining Agreement, Article 3);

4. Filing an internal agency grievance (FDIC Directive 2700.01, Grievances);
5. Disclosures of violations of Merit Systems Principles (5 U.S.C. Section 2301(b)(9));
6. Disclosures protected by the Whistleblower Protection Act and Whistleblower Protection Enhancement Act (5 U.S.C. Section 2302(b)(8) & Section (b)(9)(A)(i), (B), (C), or (D));
7. Making a complaint or disclosing information to the Office of Inspector General (5 U.S.C. Section 407(c));
8. Disclosures based on a reasonable belief of any violation of laws, rules, or regulations;
9. Disclosures based on a reasonable belief about gross mismanagement, a gross waste of funds, fraud, an abuse of authority, or a substantial and specific danger to public health or safety;
10. Disclosures protected by the Depository Institution Employee Protection Remedy (12 U.S.C. Section 1831j);
11. Petitioning or providing information to Congress, a Member of Congress, or a Congressional Committee (5 U.S.C. Section 7211); and
12. Participating in investigations undertaken by the FDIC, including OPC and OEEEO, or federal agencies regarding any of the above.

B. Anti-Retaliation Actions

To foster an environment where individuals feel comfortable exercising their rights and making disclosures without fear of retaliation, the FDIC commits to the following actions:

1. The FDIC will regularly train its workforce on issues of retaliation.
2. Executives, supervisors, and managers who observe or otherwise learn about retaliation covered under this Directive must report the conduct to OPC at OPC@fdic.gov within two business days of becoming aware of the conduct.
3. Non-supervisory employees and applicants for employment who observe, experience, or otherwise learn about retaliation covered under this Directive may report the conduct to:
 - a. An FDIC manager or supervisor;
 - b. The Office of Professional Conduct (OPC);

- c. The Office of Equal Employment Opportunity (OEEEO);
 - d. The FDIC OIG Hotline or any OIG management official (OIG contact information is listed in the [Appendix](#)); or
 - e. The U.S. Office of Special Counsel (OSC) (OSC contact information is listed in the [Appendix](#)).
- 4. All individuals who are interviewed by FDIC representatives as part of any personnel investigation, agency harassment investigation, or EEO investigation will be notified at the beginning of the interview that they are legally protected from retaliation and will be encouraged to report, to the contacts listed in [Policy Section B.3.](#) above, any future acts of retaliation that may occur.
 - 5. The FDIC will require all employees to cooperate promptly with any authorized investigation concerning allegations of retaliation.
 - 6. If an FDIC employee is found to have engaged in retaliatory activity prohibited by this Directive, the FDIC will propose at least the minimum penalties of:
 - a. Not less than a three-day suspension for a first offense; and
 - b. Removal for a second offense (see 5 U.S.C. Section 7515).
 - 7. The FDIC will document adverse actions taken against an employee for retaliatory acts in the employee's Official Personnel File, as required under the No FEAR Act, the Cummings Act, and applicable OPM regulations.
 - 8. Each FDIC supervisor's performance ratings will consider not just whether the supervisor has minimally complied with anti-retaliation and whistleblower laws, but also whether the supervisor has worked to build a "constructive work environment... based upon transparent communication, mutual trust, and respect" and whether the supervisor "responds constructively and in alignment with FDIC policy when employees make protected disclosures, takes appropriate actions to resolve these disclosures, and fosters an environment in which employees feel comfortable making such disclosures."
 - 9. Any time the FDIC implements or enforces a nondisclosure policy, form, or agreement, the FDIC will include the statutory statement from 5 U.S.C. Section 2302(b)(13) to clarify that legally protected whistleblowing remains permissible.

C. Training

All employees are required to take mandatory training on the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act at least every two years.

RESPONSIBILITIES

A. Director, Office of Professional Conduct:

Is designated as the FDIC official responsible for:

1. Receiving, reviewing, and investigating allegations of harassment, interpersonal misconduct, and retaliation for reporting such conduct;
2. Receiving protected disclosures that involve classified, confidential, or other sensitive information or are required to be kept confidential under Executive Order;
3. Enforcing discipline when allegations are substantiated; and
4. Representing the FDIC in any challenges to that discipline.

B. Director, Office of Equal Employment Opportunity:

Is designated as the FDIC official responsible for:

1. Receiving, reviewing, and investigating allegations of discrimination and allegations of retaliation for reporting such allegations or opposing discrimination; and
2. Making final agency decisions with respect to allegations filed with the OEEEO.

C. Whistleblower Protection Coordinator:

Is designated by the FDIC Inspector General to perform the following functions:

1. Educate employees about prohibitions on retaliation for protected disclosures;
2. Educate employees who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures;
3. Inform employees about the means by which they may seek review of any allegation of reprisal for whistleblowing, as well as general information about the timeliness of such cases, the availability of any alternative dispute mechanisms, and avenues for potential relief;
4. Promote the timely and appropriate handling and consideration of protected disclosures and allegations of reprisal, to the extent practicable, by the OIG;
5. Assist the OIG in facilitating communication and coordination with the Special Counsel, the Council of Inspectors General on Integrity and Efficiency, the FDIC, Congress, and any other relevant entity regarding the timely and appropriate handling and consideration

of protected disclosures, allegations of reprisal, and general matters regarding the implementation and administration of whistleblower protection laws, rules, and regulations; and

6. Not act as a legal representative, agent, or advocate of the employee or former employee.

D. Executives, Supervisors, and Managers:

1. Must not take or fail to take, or threaten to take or fail to take, any personnel action with respect to any employee or applicant for employment because the employee or applicant is engaged in legally protected activities;
2. Must not discharge, demote, or otherwise discriminate against a contractor as a reprisal for disclosing evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of a law, rule, or regulation related to a federal contract, including the competition for or negotiation of a contract;
3. Must not otherwise retaliate against anyone engaged in legally protected activities; and
4. Must report retaliation covered under this Directive to OPC at OPC@fdic.gov within two business days of becoming aware of the conduct.

E. Employees, Contractors, and Applicants:

1. Be familiar with the content of this Directive to understand their anti-retaliation and whistleblower protection rights, and encourage an environment that allows protected disclosures to be made and received without retaliation or the threat of retaliation;
2. Must take mandatory training on the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act;
3. Promptly report retaliation covered under this Directive that the employee, contractor, or applicant observes, experiences, or otherwise learns about;
4. Understand the proper outlet for reporting when a protected disclosure involves classified, confidential, or other sensitive information; and
5. When believing they are a victim of retaliation for engaging in any legally protected activity, including whistleblowing, take note of any applicable reporting or filing deadlines and familiarize themselves with potential legal remedies, which may be sought through the following channels:

- a. A timely negotiated grievance for bargaining unit employees pursuing their rights through the negotiated grievance procedure (see FDIC Directive 2700.01, Grievances, Appendix – Submitting A Grievance).
- b. A timely appeal to the U.S. Merit Systems Protection Board (MSPB) if the covered personnel action is an adverse action directly appealable to the MSPB.
- c. A complaint filed with the U.S. Office of Special Counsel (OSC) for investigation if the covered personnel action is not directly appealable to the MSPB (if the OSC does not seek relief on the individual's behalf, the individual may still have the right to file an Individual Right of Action appeal to the MSPB).
- d. A complaint filed with the FDIC Office of Professional Conduct (OPC) if the act of retaliation concerns harassment, interpersonal misconduct, or allegations reported to OPC.
- e. Timely EEO counseling if the act of retaliation concerns protected EEO activity (see FDIC Directive 2710.02, EEOC Discrimination Complaint Process) or allegations reported to the Office of Equal Employment Opportunity (OEEO).

APPENDIX - CONTACT INFORMATION

Questions regarding whistleblower protection rights, retaliation for participating in legally protected activities, or filing procedures may be directed to the following contacts:

1. The FDIC Office of Inspector General (OIG) or the designated Whistleblower Protection Coordinator in the OIG at:
 - <https://www.fdicoint.gov>
 - 1-800-964-FDIC
 - oi hotline@fdicoint.gov
2. The FDIC Office of Professional Conduct at:
 - <https://fdicnet.fdic.gov/opc>
 - OPC@fdic.gov
3. The FDIC Office of Equal Employment Opportunity at:
 - <https://fdicnet.fdic.gov/oeeo>
 - eeo-info@fdic.gov
4. The U.S. Office of Special Counsel at:
 - <https://www.osc.gov>
 - 1-800-872-9855

GLOSSARY OF TERMS

Retaliation: An action taken to penalize someone for or prevent someone from participating in legally protected activities. Examples of retaliation for engaging in legally protected activities may include, but are not limited to, firing, demoting, denying a promotion, disciplining, intimidating, threatening, reassigning, reducing pay, and unsupported negative evaluations.

U.S. Office of Special Counsel: An independent investigative and prosecutorial agency within the federal government that receives and investigates complaints alleging prohibited personnel practices, including those involving reprisal for whistleblowing.

Whistleblowing: When a federal employee or applicant for employment discloses information that the individual reasonably believes evidences:

- A violation of a law, rule, or regulation;
- Gross mismanagement;
- A gross waste of funds;
- An abuse of authority; or
- A substantial and specific danger to public health or safety.

LIST OF ABBREVIATIONS

EEO: Equal Employment Opportunity

EEOC: U.S. Equal Employment Opportunity Commission

MSPB: U.S. Merit Systems Protection Board

OEEO: FDIC Office of Equal Employment Opportunity

OIG: FDIC Office of Inspector General

OPC: FDIC Office of Professional Conduct

OSC: U.S. Office of Special Counsel