



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

MICHAEL S. BARR
VICE CHAIR FOR SUPERVISION

December 12, 2023

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Ranking Member Waters:

Following up on your request during my testimony on November 15, 2023, attached is the Federal Reserve Board's (Board) Discriminatory Workplace Harassment Policy that includes Sexual Harassment. The policy also was provided to your staff on December 1. It is available to all employees on the Board's internal website and provided to all incoming employees. This long-term policy is updated as needed.

In addition, below is information that was provided to your staff on December 1 regarding the Notification and Federal Employee Anti-discrimination and Retaliation Act (No FEAR Act) training.

Board staff are required to complete training on the No FEAR Act every two years. The Board's web-based No FEAR Act training provides instruction on all topics required by the No FEAR Act, including instruction on employee and manager rights and responsibilities. The Board's course incorporates information specific to the Board's Equal Employment Opportunity (EEO) complaint process, discriminatory harassment policy and procedures, reasonable accommodation policy and procedures, and diversity, equity, and inclusion.

New Board employees receive information about their rights and responsibilities under the No FEAR Act, during onboarding orientation, including a copy of the Board's EEO Policy Statement, Reasonable Accommodation Policy, and as noted above, the Discriminatory Workplace Harassment Policy. In addition, new employees are required to take the No FEAR Act training course within 90 days of joining the Board. The biannual training requirement is formally assigned and tracked through the Board's learning management system.

I hope you find this information helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Al Burt". The signature is written in a cursive style with a large initial "A" and a long, sweeping underline.

cc: The Honorable Patrick McHenry, Chairman

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

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,

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.

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.
- 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 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.

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."

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;
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

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.

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.