

(iii) Involve accusing any person of a crime, or formally censuring any person;

(iv) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(v) Disclose information contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(vi) Disclose information the premature disclosure of which would be likely to lead to significant financial speculation in currencies, securities, or commodities or significantly endanger the stability of any financial institution;

(vii) Disclose information the premature disclosure of which would be likely to frustrate significantly implementation of a proposed Board action, unless the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on the proposal; or

(viii) Which relate to any legal proceedings, agency adjudicatory proceeding or arbitration involving the Board or the Council.

(e) If the Board closes a meeting or any portion of a meeting, the Council will issue, at least annually, a report containing a summary, consistent with 5 U.S.C. 552(b) (1970), of the Council's activities during such closed meetings or portions of meetings.

§267.6 Amendments.

These rules of organization and procedure may be amended or repealed at any time by action of the Board, provided, however, that members of the Council shall be promptly notified by the Board of any such action.

PART 268—RULES REGARDING EQUAL OPPORTUNITY

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

SOURCE: 59 FR 16098, April 6, 1994, unless otherwise noted.

Subpart A—General Provisions and Administration

§ 268.101 Authority, purpose and scope.

(a) *Authority.* The regulations in this part (12 CFR part 268) are issued by the Board of Governors of the Federal Reserve System under the authority of sections 10(4) and 11(i), (k) and (l) of the Federal Reserve Act (partially codified in 12 U.S.C. 244 and 248(i), (k) and (l)).

(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, or physical or mental disability. It also sets forth the Board's policy, program and procedures for prohibiting discrimination on the basis of physical or mental disability in programs and activities conducted by the Board. It also specifies the circumstances under which the Board will hire or decline to hire persons who are not citizens of the United States, consistent with the Board's operational needs, the requirements and prohibitions of the Immigration Reform and Control Act of 1986, as amended, and other applicable law.

§ 268.102 Definitions.

The definitions contained in this section shall have the following meanings throughout this part unless otherwise stated.

(a) *ADEA* means the Age Discrimination In Employment Act (29 U.S.C. 621 et seq.).

(b) *Agent of the class* means a class member who acts for the class during the processing of the class complaint under § 268.305 of this part.

(c) *Agreement of resolution* means the agreement referred to in § 268.305(f)(3) of this part.

(d) *Auxiliary aids* as used in subpart G of this part means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Board. For example, auxiliary aids useful for persons with impaired vision include readers, Braille materials, audio recordings, telecommunication devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

(e) *Board* means the Board of Governors of the Federal Reserve System.

(f) *Class* as used in § 268.305 of this part means a group of Board employees, former employees or applicants for employment who allegedly have been or are being adversely affected by a personnel policy or practice of the Board that discriminates against the group on the basis of their race, color, religion, sex, national origin, age or disability.

(g) *Class complaint* means a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

- (1) The class is so numerous that a consolidated complaint of the members of the class is impractical;
- (2) There are questions of fact common to the class;
- (3) The claims of the agent of the class are typical of the claims of the class; and
- (4) The agent of the class, or, if represented, the representative, will fairly and adequately protect the interests of the class.

(h) *Commission* means the Equal Employment Opportunity Commission.

(i) *Complainant* means an aggrieved person who files an individual complaint pursuant to § 268.205 of this part, except that *complainant* shall mean a complainant, agent of the class or individual class claimant for purposes of §§ 268.209, 268.402 through 268.406 and subparts E and F of this part.

(j) *Complete complaint* as used in subpart G of this part means a written statement that contains the complainant's name and address and describes the Board's alleged discriminatory actions in sufficient detail to inform the Board of the nature and date of the alleged violation. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(k) *EEOC decision* means the written decision issued by the Commission's Office of Federal Operations as described in § 268.405 of this part.

(l) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(m) *Final decision* means the Board's decision described in § 268.209 of this part.

(n) *Has a record of such an impairment* means has a history of, or has been classified (or misclassified) as having, a physical or mental impairment that substantially limits one or more major life activities.

(o) *Individual with a disability* means a person who:

(1) Has a physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment; and

(4) Shall not include an individual, a Board employee or applicant for employment, impaired while under the influence of illegal drugs, an individual disabled by alcoholism, or an individual with an infectious or commu-

nicable disease, as further defined in § 268.303(g) of this part.

(p) *Investigator* means an investigative officer or complaint examiner selected or appointed pursuant to §§ 268.103(c)(11) and 268.305(e)(3) of this part.

(q) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Board as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in § 268.102(s) of this part, but is treated by the Board as having such an impairment.

(r) *Major life activities* means functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(s) *Physical or mental impairment* means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(t) *Qualified individual with a disability* means:

(1) With respect to a Board program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Board can determine on the basis of a written record would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; or

(3) With respect to employment, an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others, and who meets the experience or education requirements (which may include passing a written test) of the position in question.

(u) *Title VII* means Title VII of the Civil Rights Act (42 U.S.C. 2000e *et seq.*).

§ 268.103 Equal employment designations.

(a) *Administrative Governor.* The Administrative Governor, a member of the Board of Governors designated by the Chairman of the Board, is charged with overseeing the internal affairs of the Board and is empowered to make decisions and determinations on behalf of the Board when authority to do so is delegated to him or her.

(1) The Administrative Governor is hereby delegated the authority to make determinations adjudicating complaints of discrimination pursuant to §§ 268.206, 268.209, 268.305(i) and 268.709 of this part, unless a member of the Board of Governors has requested that the Board of Governors make the decision on the complaint pursuant to §§ 268.209(a) or 268.709(k) of this part, settlements pursuant to § 268.305(f) of this part and determinations regarding attorney fees pursuant to § 268.501(e) of this part. The Administrative Governor is further delegated the authority to order such corrective measures, including such remedial actions as may be required by subpart E of this part, as he or she may consider necessary, including such disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice.

(2) The Administrative Governor may delegate to any officer or employee of the Board any of his or her duties or functions under this part.

(3) The Administrative Governor may refer to the Board of Governors for de-

termination or decision any complaint of discrimination that the Administrative Governor would otherwise decide pursuant to §§ 268.206, 268.209, 268.305(i) and 268.709 of this part, settlements pursuant to § 268.305(f) of this part and determinations regarding attorney fees pursuant to § 268.501(e) of this part, and may make changes in programs and procedures designed to eliminate discriminatory practices or to improve the Board's programs under this part, and may make any recommendation for remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities, or employees who have been found to have engaged in discriminatory practices, or with regard to any other matter which the Administrative Governor believes merits the attention of the Board of Governors.

(b) *Staff Director for Management.* The Staff Director for Management shall perform the following functions under this part:

(1) When so authorized by the Administrative Governor, the Staff Director for Management shall make any determinations on complaints of discrimination that would otherwise be made by the Administrative Governor under §§ 268.206, 268.209, 268.305(i) and 268.709 of this part, settlement pursuant to § 268.305(f) of this part and determinations regarding attorney fees pursuant to § 268.501(e) of this part. The Staff Director for Management shall order such corrective measures, including such remedial actions as may be required by subpart E of this part as he or she may consider necessary, and including the recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice.

(2) The Staff Director for Management shall review the record on any complaint under this part before a determination is made by the Board of Governors or the Administrative Governor on the complaint and make such recommendations as to the determination as he or she considers desirable, including any recommendation for such disciplinary action as is warranted by the circumstances when an

employee is found to have engaged in a discriminatory practice.

(3) When authorized by the Administrative Governor, the Staff Director for Management may make changes in programs and procedures designed to eliminate discriminatory practices and improve the Board's program for equal employment opportunity.

(c) *EEO Programs Director.* The EEO Programs Director is appointed by the Board of Governors and shall perform the following functions under this part:

(1) Administer the Board's equal employment opportunity program and advise the Board, the Administrative Governor and the Staff Director for Management with respect to the preparation of equal employment opportunity plans, goals, objectives, procedures, regulations, reports, and other matters pertaining to the Board's program established under § 268.202 of this part;

(2) Advise and consult with the Chairman of the Board of Governors, when necessary, on any matter pertaining to the Board's equal employment opportunity program and its administration;

(3) Evaluate from time to time the sufficiency of the Board's total program for equal employment opportunity and report to the Board of Governors, the Administrative Governor and the Staff Director for Management, with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial, supervisory or other employees who have failed in their responsibilities;

(4) Recommend to the Staff Director for Management and the Administrative Governor changes in programs and procedures designed to eliminate discriminatory practices and improve the Board's program for equal employment opportunity;

(5) Appoint a Federal Women's Program Manager, a Hispanic Program Coordinator, a Disabled Persons Program Coordinator, and such EEO Counselor(s) as may be necessary to assist the EEO Programs Director in carrying out the functions described in this part. The EEO Programs Director shall ensure such managers, coordinators and counselor(s) shall receive full and

proper training to implement their duties and responsibilities under this part;

(6) Publicize to Board employees and applicants for employment and post at all times on official Board bulletin boards:

(i) The names, business telephone numbers, business addresses and the equal employment opportunity responsibilities of the Staff Director for Management, the EEO Programs Director, the Federal Women's Program Manager, the Hispanic Program Coordinator, and the Disabled Persons Program Coordinator;

(ii) The names, business telephone numbers, business addresses of EEO Counselors, the segments of the Board for which they are responsible, the availability of EEO Counselors to counsel an employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental disability, and the requirement that an employee or applicant for employment must consult an EEO Counselor as provided by §§ 268.204 and 268.305(a) of this part; and

(iii) The time limits for contacting EEO Counselors;

(7) Provide to each employee annually (and the Division of Human Resources Management shall provide to each applicant for employment) a copy of a notice summarizing the general purposes of this part and specifying where copies of this part can be obtained. The EEO Programs Director shall ensure that copies of the summary of this part are posted in permanent locations in all Board facilities. The EEO Programs Director shall, on the request of any employee or applicant for employment provide that employee or applicant for employment with a copy of this part;

(8) Provide for counseling of aggrieved individuals and for the receipt and processing of individual and class complaints of discrimination;

(9) Provide for the receipt and investigation of individual complaints of discrimination, subject to §§ 268.204 through 268.209 of this part, and provide for the acceptance and processing and/

or dismissal of class action complaints in accordance with § 268.305 of this part;

(10) Act as the Board's designee under § 268.305(c) of this part;

(11) Appoint any investigators as necessary to administer this part. The EEO Programs Director is authorized to request the loan or assignment of any investigators or administrative judges from any agency as necessary to administer this part. The EEO Programs Director shall obtain the concurrence of the Staff Director for Management for all appointments of and reimbursements to investigators, whether from the private sector or otherwise, which exceeds the EEO Programs Director's procurement authority;

(12) Assure that individual complaints are fairly and thoroughly investigated and that final decisions of the Board are issued in a timely manner in accordance with this part;

(13) Dismiss a complaint, or a portion of a complaint, pursuant to §§ 268.206 and 268.305(c) of this part;

(14) Suspend the complaint process when appropriate for any matter that is before the Merit Systems Protection Board for a determination; and

(15) Make recommendations based upon investigative reports, hearings and EEOC decisions which require the Board's final decision pursuant to § 268.209 of this part.

(d) *EEO Counselors.* The EEO Counselor(s) are appointed by the EEO Programs Director. EEO Counselors shall carry out the functions set forth in § 268.204 of this part.

(e) *Federal Women's Program Manager.* The EEO Programs Director shall appoint a Federal Women's Program Manager. The Federal Women's Program Manager shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director for Management and the EEO Programs Director on matters affecting, and administer the Board's program with respect to, the employment and advancement of women.

(f) *Hispanic Program Coordinator.* The EEO Programs Director shall appoint a Hispanic Program Coordinator. The Hispanic Program Coordinator shall perform the following functions: Advise

the Board of Governors, the Administrative Governor, the Staff Director for Management and the EEO Programs Director on matters affecting, and administer the Board's program with respect to, the employment and advancement of Hispanics.

(g) *Disabled Persons Program Coordinator.* The EEO Programs Director shall appoint a Disabled Persons Program Coordinator. The Disabled Persons Program Coordinator shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director for Management and the EEO Programs Director on matters affecting, and administer the Board's program with respect to, the employment and advancement of individuals with a disability.

Subpart B—Board Program to Promote Equal Opportunity

§ 268.201 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 or disability, and to promote the full realization of equal opportunity in employment through a continuing affirmative program.

(b) It is also the policy of the Board to insure equal opportunity for individuals with a disability in Board programs and activities consistent with section 504 of the Rehabilitation Act (29 U.S.C. 794) and to provide equal opportunity for all persons in accordance with the Immigration Reform and Control Act of 1986, as amended (8 U.S.C. 1324a).

(c) No person shall be subject to retaliation for opposing any practice prohibited by this part, or for participating in any stage of administrative or judicial proceedings under this part. The practices prohibited by this part include those made unlawful by Title VII, the ADEA, the Equal Pay Act (29 U.S.C. 206(d)) and the Rehabilitation Act (29 U.S.C. 791).

§ 268.202 Board program for equal employment opportunity.

(a) The Board, on the basis of a person's race, color, religion, sex or national origin, shall not:

(1) Fail or refuse to hire or discharge any person, or otherwise discriminate against any person with respect to his or her compensation, terms, conditions or privileges of employment; or

(2) Limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any person of employment opportunities or otherwise adversely affect the person's status as an employee.

(b)(1) The Board, on the basis of a person's age, shall not:

(i) Fail or refuse to hire or discharge any person or otherwise discriminate against any person with respect to his or her compensation, terms, conditions or privileges of employment;

(ii) Limit, segregate or classify its employees or applicants for employment in any way which would deprive or tend to deprive any person of employment opportunities or otherwise adversely affect the person's status as an employee or applicant for employment;

(iii) Reduce the wage rate of any employee in order to comply with paragraph (b) of this section;

(iv) Discriminate against any employee or applicant for employment because such employee or applicant for employment has opposed any practice forbidden under paragraph (b) of this section, or because such employee or applicant for employment has made a charge, testified, assisted or participated in any manner in any investigation, proceeding or litigation involving paragraph (b) of this section or the ADEA; or

(v) Print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the Board indicating any preference, limitation, specification or discrimination.

(2) An aggrieved person filing a complaint of discrimination on the basis of age under this subpart B or § 268.305 of this part must have been at least 40 years of age at the time the alleged discrimination occurred.

(c) The Board shall not discriminate among employees on the basis of sex by paying wages to employees at a rate less than the rate at which it pays wages to employees of the opposite sex for equal work on jobs the performance of which require equal skill, effort and responsibility, and which are performed under similar conditions, except where such payment is made pursuant to:

(1) A seniority system;

(2) A merit system;

(3) A system which measures earnings by quantity or quality or production; or

(4) A differential based on any factor other than sex or otherwise not prohibited by this part.

(d) The Board shall not discriminate against qualified individuals with a disability who are physically or mentally disabled. The Board's program regarding individuals with a disability in employment is fully described in § 268.303 of this part.

(e) The Board has established, maintains and carries out a continuing affirmative program designed to promote equal opportunity and to identify and eliminate discriminatory practices and policies. In support of its program, the Board:

(1) Provides sufficient resources to administer its equal opportunity program to ensure efficient and successful operation;

(2) Provides for the prompt, fair and impartial processing of complaints in accordance with this part, and consistent with guidance proffered by the Commission;

(3) Conducts a continuing campaign to eradicate every form of prejudice or discrimination from the Board's personnel policies, practices and working conditions;

(4) Communicates 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, or physical or mental disability, and solicits their recruitment assistance on a continuing basis;

(5) Reviews, evaluates and controls managerial and supervisory performance in such a manner as to insure a

continuing affirmative application and vigorous enforcement of the policy of equal employment opportunity, and provides orientation, training and advice to managers and supervisors to assure their understanding and implementation of the Board's equal employment opportunity policy and program;

(6) Takes appropriate disciplinary action against employees who engage in discriminatory practices;

(7) Makes reasonable accommodation to the religious needs of employees and applicants for employment when those accommodations can be made without undue hardship on the operations of the Board;

(8) Makes reasonable accommodation to the known physical or mental limitations of qualified applicants and employees with disabilities unless the accommodation would impose an undue hardship on the operations of the Board;

(9) Reassigns, in accordance with § 268.303(f) of this part, nonprobationary employees who develop physical or mental limitations that prevent them from performing the essential functions of their positions even with reasonable accommodation;

(10) Provides recognition to employees, supervisors, managers and units demonstrating superior accomplishment in equal employment opportunity;

(11) Has established a system for periodically evaluating the effectiveness of the Board's overall equal employment opportunity effort;

(12) Provides the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs and other training measures so that they may perform at their highest potential and advance in accordance with their abilities;

(13) Informs its employees and applicants for employment of the Board's affirmative equal opportunity policy and program, and enlists the cooperation of Board employees and other proper persons; and

(14) Participates at the community level with other employers, with schools and universities and with other public and private groups in cooperative action to improve employment op-

portunities and community conditions that affect employability.

(f) In order to implement its program, the Board:

(1) Develops the plans, procedures and regulations necessary to carry out its program;

(2) Appraises its human resources management operations at regular intervals to assure their conformity with the Board's program and this part, consistent with guidance proffered by the Commission;

(3) Assigns equal employment opportunity responsibilities as appropriate to the Administrative Governor and the Staff Director for Management, and designates an EEO Programs Director, EEO Counselors, a Federal Women's Program Manager, a Hispanic Program Coordinator and a Disabled Persons Program Coordinator, and clerical and administrative support, to carry out the functions of this part in all divisions and offices at the Board;

(4) Makes written materials available to all employees and applicants for employment informing them of the variety of equal employment opportunity programs, and administrative and judicial remedial procedures available to them, and prominently posts such written materials in its human resource management and EEO offices, and throughout the workplace;

(5) Ensures that full cooperation is provided by all Board employees to EEO Counselors, Board equal employment opportunity personnel and to investigators in the processing and resolution of pre-complaint matters and complaints filed with the Board, and that cooperation is provided to the Commission in connection with review of Board decisions, including granting the Commission routine access to relevant records of the Board as appropriate and consistent with applicable law, regulations and policies of the Board; and

(6) Publicizes to all employees and posts at all times the names, business telephone numbers and business addresses of the EEO Counselors, a notice of the time limits and necessity of contacting an EEO Counselor before filing a complaint, and the telephone numbers and addresses of the Staff Director

for Management, EEO Programs Director, Federal Women's Program Manager, Hispanic Program Coordinator and Disabled Persons Program Coordinator.

§ 268.203 Complaints of discrimination covered under this part.

(a) Individual and class complaints of employment discrimination and retaliation prohibited by § 268.202(a) (discrimination on the basis of race, color, religion, sex and national origin), § 268.202(b) (discrimination on the basis of age when the aggrieved person is at least 40 years of age), § 268.303(a) (discrimination on the basis of a disability), or § 268.202(c) (sex-based wage discrimination) of this part shall be processed in accordance with this part. Complaints alleging retaliation prohibited under this part are considered to be complaints of discrimination for purposes of this part.

(b) Except as set forth in § 268.304 and in subpart G of this part, this part applies to all Board employees and applicants for employment at the Board, and to all Board personnel policies or practices affecting Board employees or applicants for employment at the Board.

§ 268.204 Pre-complaint processing.

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

(1) An aggrieved person must initiate contact with an EEO Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the date that the action was communicated to the aggrieved person.

(2) The Board shall extend the 45-day time limit in paragraph (a)(1) of this section when the individual shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he or she was prevented by circumstances beyond his or her control

from contacting an EEO Counselor within the time limits, or for other reasons considered sufficient by the Board.

(b) At the initial counseling session, EEO Counselors must advise individuals in writing of their rights and responsibilities, including the right to request a hearing after the investigation by the Board, the right to file a notice of intent to sue pursuant to § 268.301(a) of this part and to file a lawsuit alleging a violation of the ADEA instead of an administrative complaint of age discrimination under this part, the duty to mitigate damages, administrative and court time frames, and that only the matter(s) raised in pre-complaint counseling (or issues like or related to issues raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the Board. EEO Counselors must advise individuals of their duty to keep the Board informed of their current address, to serve copies of requests for review by the Commission on the Board, and to keep the Commission informed of their current address in connection with any review of a Board action. The notice required by paragraphs (d) and (e) of this section shall include a notice of the right to file a class complaint. If the aggrieved person informs an EEO Counselor that he or she wishes to file a class complaint, the EEO Counselor shall explain the class complaint procedures and the responsibilities of the agent of the class.

(c) EEO Counselors shall conduct counseling activities in accordance with instructions promulgated by the EEO Programs Director, which shall be consistent with the counseling guidelines contained in the Commission's "EEO Management Directives For 29 CFR part 1614". When advised that a complaint has been filed by an aggrieved person, the EEO Counselor shall submit a written report within 15 calendar days to the EEO Programs Director and to the aggrieved person concerning the issues discussed and actions taken during counseling.

(d) Unless the aggrieved person agrees to a longer counseling period under paragraph (e) of this section, the EEO Counselor shall conduct the final interview with the aggrieved person

within 30 days of the date the aggrieved person brought the matter to the EEO Counselor's attention. If the matter has not been resolved, the aggrieved person shall be informed in writing by the EEO Counselor, not later than the 30th day after contacting the EEO 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 calendar 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 EEO Programs Director is informed immediately if the complainant retains counsel or a representative.

(e) Prior to the end of the 30-day period, the aggrieved person may agree in writing with the Board to postpone the final interview and extend the counseling period for an additional period of no more than 60 days. If the matter has not been resolved before the conclusion of the agreed extension, the notice described in paragraph (d) of this section shall be issued.

(f) In the event the aggrieved person believes that he/she has been discriminated against and agrees to participate in an established Board alternative dispute resolution procedure, the pre-complaint processing period of this section will be 90 days. If the matter has not been resolved before the 90th day, the notice described in paragraph (d) of this section shall then be issued.

(g) The EEO Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint. The EEO Counselor shall not reveal the identity of an aggrieved person who consulted the EEO Counselor, except when authorized to do so by the aggrieved person, or until the Board has received a discrimination complaint under this part from that person involving the same matter.

§ 268.205 Individual complaints.

(a) A complaint alleging that the Board discriminated against the complainant must be filed with the Board.

(b) A complaint must be filed within 15 calendar days of receipt of the notice required by §§ 268.204 (d), (e) or (f) of this part.

(c) A complaint must contain a signed statement from the person claiming to be aggrieved or that person's attorney. This statement must be sufficiently precise to identify the aggrieved person and to describe generally the action(s) or practice(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the complainant's representative can be contacted.

(d) The EEO Programs Director shall acknowledge receipt of a complaint in writing and inform the complainant of the date on which the complaint was filed. Such acknowledgement shall also advise the complainant that:

(1) The complainant has the right to file a request for review with the Commission with regard to the Board's final decision or dismissal of all or a portion of a complaint; and

(2) The Board is required to conduct a complete and fair investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the period.

§ 268.206 Dismissals of complaints.

(a) The Board shall dismiss a complaint or a portion of a complaint:

(1) That fails to state a claim under §§ 268.203 and 268.205(c) of this part, or states the same claim that is pending before or has been decided by the Board or the Commission;

(2) That fails to comply with the applicable time limits contained in §§ 268.204, 268.205(b) and 268.305(b) of this part, unless the Board extends the time limits in accordance with § 268.604(c) of this part, or that raises a matter that has not been brought to the attention of an EEO Counselor and is not like or related to a matter that has been brought to the attention of an EEO Counselor;

(3) That is the basis of a pending civil action in a United States District Court in which the complainant is a party, provided that at least 180 days have passed since the filing of the administrative complaint, or that was the basis of a civil action decided by a United States District Court in which the complainant was a party;

(4) That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory;

(5) Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 15 calendar days to a notice of proposed dismissal sent to his or her last known address;

(6) Where the Board has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 calendar days of its receipt or the complainant's response does not address the Board's request, provided that the request included a notice of the proposed dismissal. Instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available; or

(7) If, prior to the issuance of the notice required by § 268.207(f) of this part, the complainant refuses within 30 days of receipt of an offer of settlement to accept the Board's offer of full relief containing a certification from the Board's Staff Director for Management, the General Counsel or a designee reporting directly to the Staff Director for Management or General Counsel (after consulting with the EEO Programs Director) that the offer constitutes full relief, provided that the offer gave notice that failure to accept would result in dismissal of the complaint. An offer of full relief under this paragraph (a)(7) is the appropriate relief in § 268.501 of this part.

(b) The Board shall inform the complainant of the right to file a request for review with the Commission with regard to the dismissal of the individual complaint pursuant to § 268.401 of this part, or to file a civil action. A copy of EEOC Form 573, notice of Appeal/Petition, shall be attached to the Board's decision to dismiss an individual complaint under this section.

§ 268.207 Investigation of complaints.

(a) The investigation of individual complaints shall be conducted by an investigator appointed by the EEO Programs Director.

(b) Consistent with guidance proffered by the Commission, the Board, through the EEO Programs Director, shall develop a complete and impartial factual record upon which to make findings on the matters raised by the written complaint. The investigator may use an exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences or any other fact-finding methods that efficiently and thoroughly address the matters at issue. The EEO Programs Director may incorporate alternative dispute resolution techniques into the investigation in order to promote early resolution of complaints.

(c) The procedures in paragraphs (c)(1) through (4) of this section apply to the investigation of complaints:

(1) The complainant, the Board and any employee of the Board shall produce such documentary and testimonial evidence as the investigator deems necessary, consistent with applicable laws, regulations and policies of the Board.

(2) The investigator may administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or the Board or its employees, fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits or the attendance of witness(es), the investigator may note in the investigative record that the Board when rendering a final decision should, or the Commission on review may, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as it deems appropriate.

(4) If documentary or testimonial evidence is needed by the investigator, and such documentary evidence is known to be contained in the files of another federal agency, or the testimony of an employee of another federal agency is needed, the EEO Programs Director shall, if necessary, contact the Commission for assistance in obtaining such documentary or testimonial evidence.

(d) The investigation shall be conducted by an investigator with appropriate security clearances.

(e)(1) The Board shall complete its investigation within 180 days of the date of the filing of an individual complaint or within the time period contained in the determination of the Commission on review of a dismissal pursuant to §268.206 of this part. By written agreement within those time periods, the complainant and the Board may voluntarily extend the time period for not more than an additional 90 days. The Board may unilaterally extend the time period or any period of extension for not more than 30 days where it must sanitize an investigative file that may contain information classified pursuant to Executive Order No. 12356, or successor orders, as secret in the interest of national defense or foreign policy, provided the Board notifies the complainant of the extension.

(2) Confidential supervisory information, as defined in 12 CFR 261.2(b), 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 and Review of Personal Information in Systems of Records, 12 CFR part 261a.

(f) Within 180 days from the filing of the complaint, within the time period contained in a determination of the

Commission's Office of Federal Operations on review of a dismissal, or within any period of extension provided for in paragraph (e) of this section, the Board shall notify the complainant that the investigation has been completed, shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of the receipt of the investigative file, the complainant has the right to request a hearing before an administrative judge from the Commission or may receive an immediate final decision pursuant to §268.209 of this part from the Board. In the absence of the required notice, the complainant may request a hearing under §268.208 of this part at any time after 180 days has elapsed from the filing of the complaint.

[59 FR 16098, Apr. 6, 1994, as amended at 61 FR 252, Jan. 4, 1996]

§268.208 Hearings.

(a) *Requests.* When a complainant requests a hearing, the EEO Programs Director shall request the Commission to appoint an administrative judge to conduct a hearing in accordance with this section. Any hearing will be conducted by an administrative judge or hearing examiner with appropriate security clearances. Where the administrative judge determines that the complainant is raising or intends to pursue issues like or related to those raised in the complaint, but which the Board has not had an opportunity to address, the administrative judge shall remand any such issue for counseling in accordance with §268.204 of this part or for such other processing as may be ordered by the administrative judge.

(b) *Discovery.* The administrative judge shall notify the parties of the right to seek discovery prior to the hearing and may issue such discovery orders as are appropriate. Unless the parties agree in writing concerning the methods and scope of discovery, the party seeking discovery shall request authorization from the administrative judge prior to commencing discovery. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint, but the administrative

judge may reasonably limit the quantity and timing of discovery. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, privileged, or that production would be unlawful.

(c) *Conduct of hearing.* The Board shall provide for the attendance at a hearing of all Board employees approved as witnesses by an administrative judge. Attendance at hearings will be limited to persons determined by the administrative judge to have direct knowledge relating to the complaint. Hearings are part of the investigative process and are thus closed to the public. The administrative judge shall have the power to regulate the conduct of a hearing, limit the number of witnesses where testimony would be repetitious, and exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. The administrative judge shall receive into evidence information or documents relevant to the complaint. Rules of evidence shall not be applied strictly, but the administrative judge shall exclude irrelevant or repetitious evidence. The administrative judge or the Commission may refer to the Disciplinary Committee of the appropriate Bar Association any attorney or, upon reasonable notice and an opportunity to be heard, suspend or disqualify from representing complainants or agencies in hearings raising claims of discrimination any representative who refuses to follow the orders of an administrative judge, or who otherwise engages in improper conduct. The Board in such circumstances may take whatever action it deems appropriate to suspend or disqualify any such attorney or representative from appearing or practicing before the Board.

(d) *Evidentiary procedures.* The procedures in paragraphs (d) (1) through (3) of this section apply to hearings of complaints:

(1) The complainant, the Board and any employee of the Board shall produce such documentary and testimonial evidence as the administrative

judge deems necessary, consistent with applicable laws, regulations and policies of the Board. If documentary or testimonial evidence is needed for the hearing, and such documentary evidence is known to be contained in the files of another federal agency, or if the testimony of an employee of another federal agency is needed, then the administrative judge may seek assistance from appropriate sources in obtaining such documentary or testimonial evidence for the hearing.

(2) Administrative judges are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or the Board or its employees fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the administrative judge may, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a finding fully or partially in favor of the opposing party; or

(v) Take such other actions as appropriate.

(e) *Findings and conclusions without hearing.* (1) If a party believes that some or all material facts are not in genuine dispute and there is no genuine issue as to credibility, the party may, at least 15 calendar days prior to the date of the hearing or at such earlier time as required by the administrative judge, file a statement with the administrative judge prior to the hearing setting forth the fact or facts and referring to the parts of the record relied on to support the statement. The statement must demonstrate that there is

no genuine issue as to any such material fact. The party shall serve the statement on the opposing party.

(2) The opposing party may file an opposition within 15 calendar days of receipt of the statement in paragraph (e)(1) of this section. The opposition may refer to the record in the case to rebut the statement that a fact is not in dispute or may file an affidavit stating that the party cannot, for reasons stated, present facts to oppose the request. After considering the submissions, the administrative judge may order that discovery be permitted on the fact or facts involved, limit the hearing to the issues remaining in dispute, issue findings and conclusions without a hearing or make such other ruling as is appropriate.

(3) If the administrative judge determines upon his or her own initiative that some or all facts are not in genuine dispute, he or she may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 calendar days, issue an order limiting the scope of the hearing or issue findings and conclusions without holding a hearing.

(f) *Record of hearing.* The hearing shall be recorded and the Board shall arrange and pay for verbatim transcripts. All documents submitted to, and accepted by, the administrative judge at the hearing shall be made part of the record of the hearing. If the Board submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, the administrative judge shall make the document available to the Board's representative for reproduction.

(g) *Findings and conclusions.* Unless the administrative judge makes a written determination that good cause exists for extending the time for issuing findings of fact and conclusions of law, within 180 days of a request for a hearing being received by the Commission, an administrative judge shall issue findings of fact and conclusions of law on the merits of the complaint, and shall order appropriate relief where discrimination is found with regard to the matter that gave rise to the complaint. The administrative judge shall

send copies of the entire record, including the transcript, and the findings and conclusions to the parties by certified mail, return receipt requested. Within 60 days of receipt of the findings and conclusions, the Board may reject or modify the findings and conclusions or the relief ordered by the administrative judge and issue a final decision in accordance with § 268.209 of this part. If the Board does not, within 60 days of receipt of the findings and conclusions, accept, reject or modify the findings and conclusions of the administrative judge, then the findings and conclusions of the administrative judge and the relief ordered shall become the final decision of the Board and the Board shall notify the complainant of the final decision in accordance with § 268.209 of this part.

§ 268.209 Final decisions.

(a) The EEO Programs Director shall notify the Board of Governors when a complaint is ripe for decision under this section. At the request of any member of the Board of Governors made within 3 business days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director for Management if he or she is delegated the authority to do so under § 268.103(a)(2) of this part, shall make the decision on the complaint.

(b) The Board shall issue a final decision:

(1) Within 60 days of receiving notification that a complainant has requested an immediate decision in accordance with § 268.207(f) of this part;

(2) Within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a final decision as provided by § 268.207(f) of this part;

(3) Within 60 days of receiving the findings and conclusions of an administrative judge under § 268.208(g) of this part;

(4) Within 30 days of receiving the written recommendation of an administrative judge to accept or reject the class complaint pursuant to § 268.305(c)(7) of this part;

(5) If it decides to vacate an agreement of resolution upon the selection of a member of the class pursuant to § 268.305(f)(4) of this part;

(6) Within 60 days of receiving findings and recommendations of an administrative judge following a class action hearing pursuant to the procedures stated under § 268.305(i) of this part;

(7) Within 90 days of receipt of a written claim by a class member pursuant to § 268.305(k)(3) of this part; or

(8) Within 30 days of receiving the EEOC decision pursuant to § 268.405(c) of this part.

(c) The final decision of the Board shall consist of findings by the Board on the merits of each issue in the complaint, or following review by the Commission, the reason or reasons for acceptance, modification or rejection of each finding in an EEOC decision. When discrimination is found and indicated in the final decision, appropriate remedies and relief in accordance with subpart E of this part will be addressed in the final decision.

(d) The final decision shall contain information regarding the right to file a request for review with the Commission of final decisions pursuant to paragraphs (b)(1) through (7) of this section and the procedures for filing a request for review with the Commission, the right to file a civil action in a United States District Court, including the name of the proper defendant in any such lawsuit, and the applicable time limits for reviews and lawsuits. A copy of EEOC Form 573, Notice of Appeal/Petition, shall be attached to the final decision pursuant to paragraphs (b)(1) through (7) of this section.

Subpart C—Provisions Applicable to Particular Complaints

§ 268.301 Age Discrimination in Employment Act.

(a) As an alternative to filing a complaint of discrimination on the basis of age under this part, an aggrieved person may file a civil action in a United States District Court against the Board of Governors. The aggrieved person must give notice of his or her intent to file such action with the Commission, with a copy to the Board's

EEO Programs Director, not less than 30 days prior to filing such civil action. The notice must be filed in writing with the Commission: Federal Sector Programs, Equal Employment Opportunity Commission, 1801 L Street, NW, Washington, DC 20507, within 180 days of the occurrence of the alleged unlawful practice.

(b) The Commission may exempt a position from the provisions of the ADEA if the Commission establishes a maximum age requirement for the position on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. The Board may adopt a Commission exemption for inclusion under this section.

(c) When an aggrieved person has filed a complaint under § 268.205 or § 268.305 of this part alleging age discrimination, administrative remedies will be considered to be exhausted for purposes of filing a civil action:

(1) 180 days after the filing of an individual complaint if the Board has not issued a final decision and the complainant has not filed a request for review by the Commission, or 180 days after the filing of a class complaint if the Board has not issued a final decision;

(2) After the issuance of a final decision under § 268.209 of this part on an individual or class complaint if the individual has not filed a request for review with the Commission; or

(3) After the issuance of a final decision under § 268.209(b)(8) following an EEOC decision under § 268.405 of this part, or 180 days after the filing of a request for review under subpart D of this part if the Commission has not issued an EEOC decision.

[59 FR 16098, Apr. 6, 1996, as amended at 61 FR 13079, Mar. 26, 1996]

§ 268.302 Equal Pay Act.

(a) Any employee who believes he or she has received unequal pay due to discrimination based on sex may seek recovery of withheld wages by filing a complaint of discrimination under subpart B of this part, if a complaint of individual discrimination, or under § 268.305 of this part if a class action, except that civil actions shall be filed

pursuant to paragraph (b) of this section.

(b) A complainant, agent of the class or individual class claimant under this section may file a civil action against the Board pursuant to §268.506 of this part in a United States District Court should the complainant, agent of the class or individual class claimant believe he or she has been denied equal pay.

(c) The Board shall preserve any records that are made in the regular course of business which relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, description of practices, or other matters which describe or explain the basis for payment of any wage differential to employees of the opposite sex, and which may be pertinent to the determination of whether such differential is based on a factor other than sex. Such records are to be kept for at least 3 years.

(d) Wages withheld in violation of §268.202(c) of this part have the status of unpaid minimum wage or unpaid overtime compensation.

§268.303 Rehabilitation Act.

(a) *General policy.* The Board shall give full consideration to the hiring, placement and advancement of qualified individuals with a disability who are physically or mentally disabled. The Board shall be a model employer of individuals with a disability. The Board shall not discriminate against individuals with a disability who are physically or mentally disabled.

(b) *Reasonable accommodation.* (1) The Board shall make reasonable accommodation to the known physical or mental limitations of an employee or applicant for employment who is a qualified individual with a disability unless the Board can demonstrate that the accommodation would impose an undue hardship on its operations.

(2) Reasonable accommodation may include, but shall not be limited to:

(i) Making facilities readily accessible to and usable by individuals with a disability; and

(ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modi-

fication of examinations, the provision of readers and interpreters, and other similar actions.

(3) In determining whether, pursuant to paragraph (b)(1) of this section, an accommodation would impose an undue hardship on the operation of the Board, factors to be considered include:

(i) The overall size of the Board's operations with respect to the number of employees, number and type of facilities and size of budget;

(ii) The type of Board operation, including the composition and structure of the Board's work force; and

(iii) The nature and the cost of the accommodation.

(c) *Employment criteria.* (1) The Board shall not make use of any employment test or other selection criterion that screens out or tends to screen out qualified individuals with a disability or any class of individuals with a disability unless:

(i) The test score or other selection criterion is job-related for the position in question and consistent with business necessity; and

(ii) There are no available alternative job-related tests that do not screen out or tend to screen out as many individuals with a disability.

(2) The Board shall select and administer tests concerning employment so as to insure that, when administered to an employee or applicant for employment who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the employee's or applicant's ability to perform the position or type of position in question rather than reflecting the employee's or applicant's impaired sensory, manual, or speaking skill (except where those skills are the factors that the test purports to measure).

(d) *Pre-employment inquiries.* (1) Except as provided in paragraphs (d)(2) and (3) of this section, the Board shall not conduct a pre-employment medical examination and shall not make pre-employment inquiry of an applicant as to whether the applicant is an individual with a disability or as to the nature or severity of a disability. The Board may, however, make pre-employment inquiry into an applicant's ability to meet the essential functions of the job, or the medical qualification

requirements if applicable, with or without reasonable accommodation, of the position in question, i.e., the minimum abilities necessary for safe and efficient performance of the duties of the position in question.

(2) Nothing in this section shall prohibit the Board from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:

(i) All entering employees are subjected to such an examination regardless of disability or when the pre-employment medical questionnaire used for positions that do not routinely require medical examination indicates a condition for which further examination is required because of the job-related nature of the condition; and

(ii) The results of such an examination are used only in accordance with the requirements of this part.

(3) Nothing in this section shall be construed to prohibit the gathering of pre-employment medical information for the purpose of hiring individuals with a disability.

(4) To enable and evaluate affirmative action to hire, place or advance individuals with a disability, the Board may invite employees and applicants for employment to indicate whether and to what extent they are disabled, if:

(i) The Board states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in conjunction with affirmative action; and

(ii) The Board states clearly that the information is being requested on a voluntary basis, that refusal to provide it will not subject the employee or applicant for employment to any adverse treatment, and that it will be used only in accordance with this part.

(5) Information obtained in accordance with this section as to the medical condition or history of the employee or applicant for employment shall be kept confidential except that:

(i) Managers, selecting officials, and others involved in the selection process or responsible for affirmative action may be informed that the employee or

applicant for employment is an individual with a disability;

(ii) Supervisors and managers may be informed regarding necessary accommodations;

(iii) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment;

(iv) Government officials investigating compliance with laws, regulations, and instructions relevant to equal employment opportunity and affirmative action for individuals with a disability shall be provided information upon request; and

(v) Statistics generated from information obtained may be used to manage, evaluate, and report on equal employment opportunity and affirmative action programs.

(e) *Physical access to buildings.* (1) The Board shall not discriminate against employees or applicants for employment who are qualified individuals with a disability due to the inaccessibility of its facility.

(2) It shall be the policy of the Board to comply with the provisions of the Rehabilitation Act, the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) and the Americans With Disabilities Act of 1990 (42 U.S.C. 12183 and 12204).

(f) *Reassignment.* When a non-probationary employee becomes unable to perform the essential functions of his or her position even with reasonable accommodation due to a disability, the Board shall offer to reassign the individual to a funded vacant position at the same grade level, the essential functions of which the employee would be able to perform with reasonable accommodation if necessary unless the reassignment would impose an undue hardship on the operation of the Board. In the absence of a position at the same grade level, an offer of reassignment to a vacant position at the highest available grade level below the employee's current grade level shall be made, but availability of such a vacancy shall not affect the employee's entitlement, if any, to disability retirement pursuant to any retirement plan in which the employee is enrolled.

If the Board has already posted a notice or announcement seeking applications for a specific vacant position at the time the Board has determined that the nonprobationary employee is unable to perform the essential functions of his or her position even with reasonable accommodation, then the Board does not have an obligation under this section to offer to reassign the individual to that position, but the Board shall consider the individual on an equal basis with those who applied for the position.

(g) *Exclusion from definition of “individual with a disability”*—(1) *Illegal use of drugs.* (i) The term “individual with a disability” shall not include an individual who is currently engaging in the illegal use of drugs, when the Board acts on the basis of such use. The term “drug” means a controlled substance, as defined in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812). The term “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act, but does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of federal law. This exclusion, however, does not exclude an individual with a disability who:

(A) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(B) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(C) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(ii) Except that the Board may adopt and administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraphs (g)(1)(i) (A) and (B) of this section is no longer engaging in the illegal use of drugs.

(2) *Alcoholism.* The term “individual with a disability” does not include an employee who is an alcoholic whose

current use of alcohol prevents the employee from performing the duties of his or her job, or whose employment by reason of such current alcohol use, would constitute a direct threat to the property or safety of others. In this regard, alcoholics shall meet the same performance and conduct standards to which all other Board employees must satisfy, even if an unsatisfactory performance is related to the alcoholism of the employee.

(3) *Infectious and communicable diseases.* If an individual with a disability has one of the listed diseases as determined by the Secretary of Health and Human Services under the Americans with Disabilities Act (42 U.S.C. 12113(d)(1)) and works in or applies for a position at the Board in food handling, the Board will seek reasonable accommodation under paragraph (b) of this section to eliminate the risk of transmitting the disease through the handling of food. If the individual with a disability is a nonprobationary employee and a reasonable accommodation cannot be made, the provisions contained in paragraph (f) of this section shall apply.

§ 268.304 Employment of noncitizens.

(a) *Definitions.* The definitions contained in this paragraph (a) shall apply only to this section.

(1) *Intending citizen* means a citizen or national of the United States, or a noncitizen who:

(i) Is a protected individual as defined in 8 U.S.C. 1324b(a)(3); and

(ii) Has evidenced an intention to become a United States citizen.

(2) *Noncitizen* means any person who is not a citizen of the United States.

(3) *Sensitive information* means:

(i) (A) Information that is classified for national security purposes under Executive Order No. 12356 (3 CFR, 1982 Comp., p. 166), including any amendments or superseding orders that the President of the United States may issue from time to time;

(B) Information that consists of confidential supervisory information of the Board, as defined in 12 CFR 261.2(b); or

(C) Information the disclosure or premature disclosure of which to unauthorized persons may be reasonably

likely to impair the formulation or implementation of monetary policy, or cause unnecessary or unwarranted disturbances in securities or other financial markets, such that access to such information must be limited to persons who are loyal to the United States.

(ii) For purposes of paragraph (a)(3)(i)(C) of this section, information may not be deemed sensitive information merely because it would be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) but sensitive information must be information the unauthorized disclosure or premature disclosure of which may be reasonably likely to impair important functions or operations of the Board.

(4) *Sensitive position* means any position of employment in which the employee will be required to have access to sensitive information.

(b) *Prohibitions*—(1) *Unauthorized aliens*. The Board shall not hire any person unless that person is able to satisfy the requirements of Section 101 of the Immigration Reform and Control Act of 1986.

(2) *Employment in sensitive positions*. The Board shall not hire any person to a sensitive position unless such person is a citizen of the United States or, if a noncitizen, is an intending citizen.

(3) *Preference*. Consistent with the Immigration Reform and Control Act of 1986, and other applicable law, applicants for employment at the Board who are citizens of the United States shall be preferred over equally qualified applicants who are not United States citizens.

(c) *Exception*. The prohibition of paragraph (b)(2) of this section does not apply to hiring for positions for which a security clearance is required under Executive Order No. 10450, including any subsequent amendments or superseding orders that the President of the United States may issue from time to time, where the noncitizen either has or can obtain the necessary security clearance. Any offer of employment authorized by this paragraph (c) shall be contingent upon receipt of the required security clearance in the manner prescribed by law.

(d) *Applicability*. This section applies to employment in all positions at the

Board and to employment by Federal Reserve Banks of examiners who must be appointed, or selected and approved by the Board pursuant to 12 U.S.C. 325, 326, 338, or 625.

[59 FR 16098, Apr. 6, 1994, as amended at 61 FR 252, Jan. 4, 1996]

§ 268.305 Class complaints.

(a) *Pre-complaint processing*. An employee or applicant for employment who wishes to file a class complaint must seek counseling and be counseled in accordance with the procedures under § 268.204 of this part.

(b) *Filing and presentation of a class complaint*. (1) A class complaint must be signed by the agent of the class or representative, and must identify the personnel policy or practice adversely affecting the class as well as the specific action or matter affecting the agent of the class.

(2) The complaint must be filed with the Board not later than 15 calendar days after the agent of the class receives a notice from the EEO Counselor of the right to file a class complaint.

(3) The complaint shall be processed promptly by the Board, and the parties shall cooperate and shall proceed at all times without undue delay.

(c) *Acceptance or dismissal*. (1) Within 30 days of the Board's receipt of a class complaint, the Board shall designate a representative who shall monitor the class complaint on behalf of the Board and who shall be one of the individuals referenced in § 268.202(f)(3) of this part, and forward the class complaint, along with a copy of the EEO Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the class complaint, to the Commission's Office of Federal Operations. The Commission shall assign the class complaint to an administrative judge or complaints examiner who shall, if required, have a proper security clearance. The administrative judge may require the agent of the class or the Board to submit additional information relevant to the complaint.

(2) The administrative judge may recommend that the Board dismiss the class complaint, or any portion, for any of the reasons listed in § 268.206 of this part, or because it does not meet

the prerequisites of a class complaint under § 268.102(g) of this part.

(3) If an allegation of discrimination in the class complaint is not included in the EEO Counselor's report, the administrative judge shall afford the agent of the class 15 calendar days to state whether the matter was discussed with the EEO Counselor and, if not, explain why it was not discussed. If the explanation is not satisfactory, the administrative judge shall recommend that the Board dismiss the allegation under § 268.206 of this part. If the explanation is satisfactory, the administrative judge shall refer the allegation to the Board for further counseling by an EEO Counselor with the agent of the class. After counseling, the allegation shall be consolidated with the class complaint.

(4) If an allegation of discrimination in the class complaint lacks specificity and detail, the administrative judge shall afford the agent of the class 15 calendar days to provide specific and detailed information. The administrative judge shall recommend that the Board dismiss the class complaint if the agent of the class fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the administrative judge shall advise the agent of the class how to proceed on an individual or class basis concerning these allegations.

(5) The administrative judge shall recommend that the Board extend the time limits for filing a class complaint and for consulting with an EEO Counselor in accordance with the time limit extension provisions contained in §§ 268.204(a)(2) and 268.604 of this part.

(6) When appropriate, the administrative judge may recommend that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section shall then be construed and applied accordingly.

(7) The administrative judge's written recommendation to the Board on whether to accept or dismiss a class complaint and the complaint file shall be transmitted to the Board, and notification of that transmittal shall be sent to the agent of the class. The administrative judge's recommendation

to accept or dismiss shall become the Board's decision unless the Board accepts, rejects or modifies the recommended decision within 30 days of the receipt of the recommended decision and complaint file pursuant to § 268.209 of this part. The Board shall notify the agent of the class by certified mail, return receipt requested, and the administrative judge of its decision to accept or dismiss a class complaint. At the same time, the Board shall forward to the agent of the class copies of the administrative judge's recommendation and the complaint file. The dismissal of a class complaint shall inform the agent of the class either that the class complaint is being filed on that date as an individual complaint of discrimination and will be processed under subpart B of this part, or that the class complaint is also dismissed as an individual complaint in accordance with § 268.206 of this part. In addition, it shall inform the agent of the class of the right to file a request for review of the dismissal of the class complaint with the Commission pursuant to § 268.401 of this part, or to file a civil action. A copy of EEOC Form 573, notice of Appeal/Petition, shall be attached to the Board's decision to dismiss a class complaint pursuant to § 268.209(b)(4) of this part.

(d) *Notification.* (1) Within 15 calendar days of accepting a class complaint, the Board shall use reasonable means, such as delivery, mailing to last known address or distribution, to notify all class members of the acceptance of the class complaint.

(2) Such notice shall contain:

(i) The date of acceptance of the class complaint by the Board;

(ii) A description of the issues accepted as part of the class complaint;

(iii) An explanation of the binding nature of the Board's dismissal, final decision or resolution of the class complaint on class members; and

(iv) The name, address and telephone number of the agent of the class or, if represented, the representative.

(e) *Obtaining evidence concerning the complaint.* (1) Upon the acceptance of a class complaint by the Board, the administrative judge shall notify the agent of the class and the Board's representative of the time period that will

be allowed both parties to prepare their case. This time period will include at least 60 days and may be extended by the administrative judge upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the class complaint. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, privileged, or that production would be unlawful.

(2) If mutual cooperation fails, either party may request the administrative judge to rule on a request to develop evidence. If a party fails without good cause shown to respond fully and in timely fashion to a request made or approved by the administrative judge for documents, records, comparative data, statistics or affidavits, and the information is solely in the control of one party, such failure may, in appropriate circumstances, cause the administrative judge:

(i) To draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(ii) To consider the matters to which the requested information pertains to be established in favor of the opposing party;

(iii) To exclude other evidence offered by the party failing to produce the requested information;

(iv) To recommend that a decision be entered in favor of the opposing party; or

(v) To take such other actions as the administrative judge deems appropriate.

(3) During the period for development of evidence, the administrative judge may, in his or her discretion, direct that an investigation of facts relevant to the class complaint or any portion be conducted.

(4) Both parties shall furnish to the administrative judge copies of all materials that they wish to be examined and such other material as may be requested.

(f) *Opportunity for resolution of the class complaint.* (1) The administrative judge shall furnish the agent of the class and the Board's representative a copy of all materials obtained concerning the class complaint and provide opportunity for the agent of the class to discuss the materials with the Board's representative and to attempt resolution of the class complaint.

(2) The class complaint may be resolved by agreement of the Board and the agent of the class at any time as long as the agreement is fair and reasonable.

(3) If the class complaint is resolved, the terms of the resolution shall be reduced to writing and signed by the agent of the class and the Board.

(4) Notice of the agreement of resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and shall state the relief, if any, to be granted by the Board. An agreement of resolution shall bind all members of the class. Within 30 days of the date of the notice of the agreement of resolution, any member of the class may petition the Commission to vacate the agreement of resolution because it benefits only the agent of the class or is otherwise not fair and reasonable. Such a petition will be processed in accordance with paragraph (c) of this section and if the administrative judge finds that the agreement of resolution is not fair and reasonable, he or she shall recommend that the agreement of resolution be vacated and that the original agent of the class be replaced by the petitioner or some other class member who is eligible to be the agent of the class during further processing of the class complaint. The Board may determine, with respect to the petition, that the agreement of resolution is not fair and reasonable, which vacates any agreement between the former agent of the class and the Board. The Board's decision to vacate the agreement of resolution shall be communicated to the former agent of the class and to the petitioner, and shall inform them of their right to file a request for review with the Commission under § 268.401 of this part. A copy of EEOC Form 573,

notice of Appeal/Petition, shall be attached to the Board's decision pursuant to §268.209(b)(5) of this part.

(g) *Hearing.* On expiration of the period allowed for preparation of the case, the administrative judge shall set a date for a hearing. The hearing shall be conducted in accordance with §§268.208(a) through (f) of this part.

(h) *Report of findings and recommendations.* (1) The administrative judge shall transmit to the Board a report of findings and recommendations on the class complaint, including a recommended decision, systemic relief for the class and any individual relief, where appropriate, with regard to the personnel policy or practice that gave rise to the class complaint.

(2) 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 recommend appropriate relief.

(3) The administrative judge shall notify the Board of the date on which the report of findings and recommendations was forwarded to the Board.

(i) *Board decision.* (1) Within 60 days of receipt of the report of findings and recommendations issued under §268.305(h) of this part, the Board shall issue a final decision pursuant to §268.209 of this part, which shall accept, reject, or modify the findings and recommendations of the administrative judge.

(2) The final decision of the Board shall be in writing and shall be transmitted to the agent of the class by certified mail, return receipt requested, along with a copy of the report of findings and recommendations of the administrative judge.

(3) When the Board's final decision is to reject or modify the findings and recommendations of the administrative judge, the Board's final decision shall contain specific reasons for the Board's final decision.

(4) If the Board has not issued a final decision within 60 days of its receipt of the administrative judge's report of findings and recommendations, those findings and recommendations of the administrative judge shall become the Board's final decision. The Board shall transmit the final decision to the agent

of the class within 5 calendar days of the expiration of the 60-day period.

(5) The final decision of the Board shall require any relief authorized by law and determined to be necessary or desirable to resolve the issue of discrimination.

(6) The final decision of the Board shall, subject to subpart E of this part, be binding on all members of the class and the Board.

(7) The final decision shall inform the class agent of the right to seek review by the Commission, or to file a civil action, in accordance with subpart E of this part, and of the applicable time limits.

(j) *Notification of decision.* The Board shall notify class members of the Board's final decision and 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 calendar days of the transmittal of the final decision to the agent of the class.

(k) *Relief for individual class members.* (1) When the Board finds class discrimination, the Board shall eliminate or modify the personnel policy or practice out of which the complaint arose and provide individual relief, including an award of attorney's fees and costs, to the agent of the class in accordance with §268.501(e) of this part.

(2) When class-wide discrimination is not found, but it is found that the agent of the class is a victim of discrimination, §268.501 of this part shall apply. The Board shall also, within 60 days of the issuance of its final decision finding no class-wide discrimination, issue the acknowledgement of receipt of an individual complaint as required by §268.205(d) of this part and process in accordance with the provisions of subpart B of this part, each individual complaint that was subsumed into the class complaint.

(3) When class-wide discrimination is found in a final decision of the Board, and a class member believes that he or she is entitled to individual relief, the class member may file a written claim

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with the Board's EEO Programs Director within 30 days of receipt of notification by the Board of its final decision. The claim must include a specific, detailed showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory personnel policy or practice, and that this discriminatory action took place within the period of time for which the Board found class-wide discrimination in its final decision. The period of time for which the Board finds class-wide discrimination shall begin not more than 45 days prior to the initial contact by the agent of the class with the EEO Counselor and shall end not later than the date when the Board eliminates the personnel policy or practice found to be discriminatory in the Board's final decision. The Board shall issue a final decision on each such claim within 90 days of filing. Such decision must include a notice of the right to file a request for review with the Commission or a civil action in accordance with subpart E of this part and the applicable time limits. A copy of EEOC Form 573, notice of Appeal/Petition, shall be attached to the Board's decision pursuant to § 268.209(b)(7) of this part.

[59 FR 16098, Apr. 6, 1996, as amended at 61 FR 13079, Mar. 26, 1996]

Subpart D—Review by the Equal Employment Opportunity Commission

§ 268.401 Review by the Equal Employment Opportunity Commission.

(a) An individual complainant may file a request for review with the Commission of a final decision issued by the Board under § 268.209 of this part, or a dismissal by the Board of all or a portion of an individual complaint under § 268.206 of this part.

(b) An agent of the class may file a request for review with the Commission of a dismissal of all or a portion of a class complaint rendered by the Board under § 268.305(c) of this part, or a final decision of the Board accepting or rejecting all or a portion of a report of findings and recommendations of an administrative judge with regard to a class complaint pursuant to § 268.305(i)

of this part. A class member may file a request for review with the Commission of a final decision by the Board on a claim for individual relief under a class complaint pursuant to § 268.305(k) of this part. Both an agent of the class and a class member may file a request for review with the Commission of a final decision of the Board on a petition pursuant to § 268.305(f)(4) of this part.

(c) A complainant, agent of the class or individual class claimant may file a request for review with the Commission of the Board's alleged noncompliance with a settlement agreement or final decision in accordance with § 268.504 of this part.

§ 268.402 Time limits for review by the Equal Employment Opportunity Commission.

(a) Any dismissal of a complaint or a portion of a complaint, or any final decision of the Board, as set forth in paragraphs (b)(1) through (7) of § 268.209 of this part, may be reviewed by the Commission if a request for review is filed with the Commission within 30 days of the complainant's receipt of the dismissal or final decision. In the case of class complaints, any final decision of the Board received by an agent of the class, petitioner or any individual class claimant may be reviewed by the Commission if a request for review is filed with the Commission within 30 days of its receipt. Where a complainant has notified the EEO Programs Director of alleged noncompliance with a settlement agreement in accordance with § 268.504 of this part, the complainant may file a request for review with the Commission within 35 days after notification to the EEO Programs Director under § 268.504(a) of this part of such noncompliance, but the complainant must file a request for review within 30 days of receipt of the Board's determination.

(b) If the complainant is represented by an attorney of record, then the 30 day time period provided in paragraph (a) of this section within which to file a request for review shall be calculated from the receipt of the notification required under § 268.504(a) of this part by the attorney. In all other instances, the time within which to file a request

for review with the Commission shall be calculated from the receipt of the notification required under §268.504(a) of this part by the complainant.

§268.403 How to seek review.

(a) The complainant must file a request for review with the Commission by sending EEOC Form 573, notice of Appeal/Petition, to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The complainant should indicate what matters he or she is requesting the Commission to review.

(b) The complainant shall furnish a copy of the request for review to the Board's EEO Programs Director at the same time that he or she files the request for review with the Commission. In or attached to the request for review by the Commission, the complainant must certify the date and method by which service was made on the Board.

(c) If a complainant does not file a request for review with the Commission within the time limits of this subpart D, the request for review shall be untimely and shall be dismissed by the Commission.

(d) Any statement or brief in support of the request for review must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, and to the Board within 30 days of the filing of the request for review. Following receipt of the request for review, and any brief in support of the request for review, the Director, Office of Federal Operations, Equal Employment Opportunity Commission, shall request the complaint file from the Board. The Board shall submit the complaint file and any Board statement or brief in opposition to the request for review to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, within 30 days of receipt of the Commission's request for the complaint file. A copy of the Board's statement or brief shall be served on the complainant at the same time.

§268.404 Procedure on review.

(a) The Commission's Office of Federal Operations shall review the com-

plaint file and all written statements and briefs from either party. The Commission may supplement the record by an exchange of letters or memoranda, investigation, remand to the Board or other procedures.

(b) If the Commission's Office of Federal Operations requests information from one or both of the parties to supplement the record, each party providing information shall send a copy of the information submitted to the Commission to the other party.

§268.405 Decisions on review.

(a) The Commission's Office of Federal Operations shall issue a written decision (the EEOC decision) setting forth its reasons for the decision. The Commission shall dismiss requests for review in accordance with §§268.206, 268.403(c) and 268.507 of this part. The EEOC decision shall be based on the preponderance of the evidence. If the EEOC 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 EEOC 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 to the Board by certified mail, return receipt requested.

(b) The EEOC decision issued under paragraph (a) of this section is final, subject to paragraph (c) of this section, within the meaning of §268.406(d) of this part unless:

(1) Either party files a timely request for reconsideration pursuant to §268.406 of this part; or

(2) The Commission on its own motion reconsiders the case.

(c) The Board, within 30 days of receiving the EEOC decision, shall issue a final decision pursuant to §268.209 of this part based upon the EEOC decision.

§268.406 Reconsideration.

(a) Within a reasonable period of time, the Commission may, in its discretion, reconsider an EEOC decision issued under §268.405(a) of this part, notwithstanding any other provisions of this part.

(b) A party may request reconsideration of an EEOC decision issued under § 268.405(a) of this part provided that such request is made within 30 days of receipt of an EEOC decision or within 20 days of receipt of another party's timely request for reconsideration. Such request, along with any supporting statement or brief, shall be submitted to the Commission's Office of Review and Appeals, and to all parties with proof of such submission. All other parties shall have 20 days from the date of service in which to submit to all other parties, with proof of submission, any statement or brief in opposition to the request.

(c) The request for reconsideration or the statement or brief in support of the request shall contain arguments or evidence which tend to establish that:

(1) New and material evidence is available that was not readily available when the EEOC decision was issued;

(2) The EEOC decision involved an erroneous interpretation of law, regulation or material fact, or misapplication of established policy; or

(3) The EEOC decision is of such exceptional nature as to have substantial precedential implications.

(d) A decision on a request for reconsideration by either party is final and there shall be no further right by either party to request reconsideration of an EEOC decision.

Subpart E—Remedies, Enforcement and Civil Actions

§ 268.501 Remedies and relief.

(a) *General procedures.* When the Board finds discrimination when issuing its final decision pursuant to § 268.209 of this part, the Board shall consider the following elements in providing full relief to complainants:

(1) Notification to all employees of the Board of their right to be free of unlawful discrimination and assurance that the particular types of discrimination found will not recur;

(2) Commitment that corrective, curative or preventive action will be taken, or measures adopted, to ensure that violations of law and this part similar to those found unlawful will not recur;

(3) An unconditional offer to each identified victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position;

(4) Payment to each identified victim of discrimination on a make whole basis for any loss of earnings the person may have suffered as a result of the discrimination; and

(5) Commitment that the Board shall cease from engaging in the specific unlawful employment practice found in the case.

(b) *Relief for an applicant.* (1) (i) When it is determined in a final decision that an applicant for employment has been discriminated against, the Board shall offer the applicant for employment the position that the applicant for employment would have occupied absent discrimination or, if justified by the circumstances, a substantially equivalent position unless clear and convincing evidence indicates that the applicant for employment would not have been selected even absent the discrimination. The offer to the applicant for employment shall be made in writing. The applicant for employment shall have 15 days from receipt of the offer within which to accept or decline the offer. Failure to accept the offer within the 15-day period will be considered a declination of the offer, unless the applicant for employment can show that circumstances beyond his or her control prevented a response within the time limit.

(ii) If the offer is accepted, appointment shall be retroactive to the date the applicant for employment would have been hired. Back pay, computed in the manner prescribed in 5 CFR 550.805 shall be awarded from the date the applicant for employment would have entered on duty until the date the applicant for employment actually enters on duty unless clear and convincing evidence indicates that the applicant would not have been selected even absent discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. An applicant for employment shall be deemed to have performed service at the Board during such period for all purposes except for

meeting service requirements for completion of a required probationary period.

(iii) If the offer of employment is declined, the Board shall award the applicant for employment a sum equal to the back pay he or she would have received, computed in the manner prescribed in 5 CFR 550.805 from the date he or she would have been appointed until the date the offer was declined, subject to the limitation of paragraph (b)(3) of this section. Interest on back pay shall be included in the back pay computation. The Board shall inform the applicant for employment, in its offer of employment, of the right to this award in the event the offer of employment is declined.

(2) When it is determined in a final decision that discrimination existed at the time the applicant for employment was considered for employment but also by clear and convincing evidence that the applicant would not have been hired even absent discrimination, the Board shall nevertheless take all steps necessary to eliminate the discriminatory practice and ensure it does not recur.

(3) Back pay under this paragraph (b) for complaints under Title VII or the Rehabilitation Act may not extend from a date earlier than two years prior to the date on which the complaint was initially filed by the applicant for employment.

(c) *Relief for an employee.* When it is determined in a final decision that an employee of the Board was discriminated against, the Board shall provide relief, which shall include, but need not be limited to, one or more of the following actions:

(1) Nondiscriminatory placement, with back pay computed in the manner prescribed in 5 CFR 550.805 unless clear and convincing evidence contained in the record demonstrates that the personnel action would have been taken even absent the discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The back pay liability under Title VII or the Rehabilitation Act is limited to the two years prior to the date the discrimination complaint was filed;

(2) If clear and convincing evidence indicates that, although discrimination existed at the time the personnel action was taken, the personnel action would have been taken even absent discrimination, the Board shall nevertheless eliminate any discriminatory practice and ensure it does not recur;

(3) Cancellation of an unwarranted personnel action and restoration of the employee;

(4) Expunction from the Board's records of any adverse materials relating to the discriminatory practice; and

(5) Full opportunity to participate in the employee benefit denied (e.g., training, preferential work assignments, overtime scheduling).

(d) *Mitigation of damages.* The Board shall not decline to grant relief based upon failure to mitigate damages unless it has clear and convincing evidence that the employee or applicant for employment has failed to mitigate damages. The Board shall have the burden of proving by a preponderance of the evidence that the complainant has failed to mitigate his or her damages.

(e) *Attorney's fees or costs*—(1) *Awards of attorney's fees or costs.* The provisions of this paragraph (e) relating to the award of attorney's fees or costs shall apply to allegations of discrimination prohibited by Title VII and the Rehabilitation Act. In a notice of final action or a decision, the employee or applicant for employment may be awarded reasonable attorney's fees or costs (including expert witness fees) incurred in the processing of the complaint. In this regard:

(i) A finding of discrimination raises a presumption of entitlement to an award of attorney's fees;

(ii) Attorney's fees are allowable only for the services of members of the Bar and law clerks, paralegals or law students under the supervision of members of the Bar, except that no award is allowable for the services of any employee of the Federal Government; and

(iii) Attorney's fees shall be paid only for services performed after the filing of a written complaint and after the complainant has notified the Board that he or she is represented by an attorney, except that fees allowable for a reasonable period of time prior to the notification of representation for any

services performed in reaching a determination to represent the complainant. Written submissions to the Board that are signed by the representative shall be deemed to constitute notice of representation.

(2) *Amount of awards.* (i) When the attorney's fees or costs are awarded, the complainant's attorney shall submit a verified statement of costs and attorney's fees (including expert witness fees), as appropriate, to the Board within 30 days of receipt of the final decision, unless a request for review or reconsideration is filed. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services and both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees or costs to be awarded the complainant shall be determined by agreement among the complainant, the complainant's representative and the Board. Such agreement shall immediately be reduced to writing.

(ii) (A) If the complainant, the complainant's representative and the Board cannot reach an agreement on the amount of attorney's fees or costs within 20 days of the Board's receipt of the verified statement and accompanying affidavit, the Board shall issue a decision determining the amount of attorney's fees or costs due within 30 days of receipt of the statement and affidavit. The decision of the Board shall include the specific reasons for determining the amount of the award. The complainant or the complainant's representative may file a request for review with the Commission of the Board's decision, and the Board's notice to the complainant and his or her representative shall include EEOC Form 573, notice of Appeal/Petition.

(B) The amount of attorney's fees shall be calculated in accordance with existing case law using the following standards: The starting point shall be the number of hours reasonably expended multiplied by a reasonable hourly rate. This amount may be reduced or increased in consideration of the following factors, although ordinarily many of these factors are subsumed within the calculation set forth

in this paragraph (e)(2)(ii)(B): The time and labor required, the novelty and difficulty of the questions, the skill requisite to perform the legal service properly, the attorney's preclusion from other employment due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, time limitations imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation, and ability of the attorney, the undesirability of the case, the nature and length of the professional relationship with the client, and the awards in similar cases. Only in cases of exceptional success should any of these factors be used to enhance an award computed by the formula set forth in this paragraph (e)(2)(ii)(B).

(C) The costs that may be awarded are those authorized by 28 U.S.C. 1920 to include: Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case; fees and disbursements for printing and witnesses; and fees for exemplification and copies necessarily obtained for use in the case.

(iii) Witness fees shall be awarded in accordance with the provisions of 28 U.S.C. 1821, except that no award shall be made for a federal employee who is in a duty status when made available as a witness.

§ 268.502 Compliance with EEOC decisions.

(a) The relief ordered in an EEOC decision, if accepted pursuant to § 268.209 of this part as a final decision, or not acted upon by the Board within the time periods of § 268.209 of this part, shall be binding upon the Board. Failure to implement its final decision, or the EEOC decision in such circumstances, shall be grounds for the complainant to file a civil action under §§ 268.505 and 268.506 of this part.

(b) Notwithstanding paragraph (a) of this section, when the Board requests reconsideration, when the case involves an employee's removal, separation, or suspension continuing beyond the date of the request for reconsideration, and when the EEOC decision recommends retroactive restoration, the Board shall comply with the EEOC decision only to

the extent of the temporary or conditional restoration of the employee to duty status in the position recommended by the Commission, pending the outcome of the Board's request for reconsideration.

(1) Service under the temporary or conditional restoration provisions of this paragraph (b) shall be credited toward the completion of a probationary or trial period, or eligibility for a within-grade increase, if the EEOC decision is upheld.

(2) The Board shall notify the Commission and the employee in writing, at the same time it requests reconsideration, that the relief it provides is temporary or conditional.

(c) Relief shall be provided in full no later than 60 days after all administrative proceedings have ended.

§ 268.503 Enforcement of EEOC decisions.

(a) *Petition for enforcement.* As set forth in this section, a complainant may petition the Commission for enforcement of an EEOC decision issued under the review process of this part. The petition shall be submitted to the Office of Federal Operations, Equal Employment Opportunity Commission. The petition shall specifically set forth the reasons that lead the complainant to believe that the Board is not complying with the EEOC decision.

(b) *Compliance.* The Commission's Office of Federal Operations may take appropriate action to ascertain whether the Board should have adopted the EEOC decision pursuant to § 268.209 of this part. If the Commission determines that the Board has failed to comply with the EEOC decision in full, the Commission may undertake the efforts set forth in paragraphs (c) and (d) of this section to obtain compliance by the Board.

(c) *Clarification.* The Commission's Office of Federal Operations may, on its own motion or in response to the petition for enforcement or in connection with a timely request for reconsideration, issue a clarification of an EEOC decision. A clarification may not change the result of a prior EEOC decision or enlarge or diminish the relief contained in the EEOC decision, but it may further explain the meaning or in-

tent of the EEOC decision. The Commission may also send a notice to the Board seeking an explanation why the Board failed to adopt the EEOC decision as its final decision under § 268.209 of this part, and the Board shall respond to such request within 30 days of receipt of the notice addressing the issue raised by the Commission.

(d) *Notification to complainant of completion of administrative efforts.* Where the Commission has determined that the Board has failed to adopt the EEOC decision as its final decision, the Commission may notify the complainant who has petitioned the Commission under paragraph (a) of this section of his or her right to file a civil action under § 268.505 of this part for failure of the Board to adopt the EEOC decision as its final decision.

§ 268.504 Compliance with settlement agreements and final decisions.

(a) Any settlement agreement knowingly and voluntarily agreed to by the Board and a complainant, reached at any stage of the complaint process, shall be binding on both parties. A final decision of the Board that has not been the subject of review by the Commission, or in a civil action, shall nonetheless be binding on the Board. If the complainant believes that the Board has failed to comply with the terms of a settlement agreement or a final decision, the complainant shall notify the EEO Programs Director, in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged noncompliance. The complainant may request that the Board implement the terms of the settlement agreement or final decision or alternatively, that the complaint be reinstated for further processing from the point processing ceased.

(b) The Board shall attempt to resolve the matter brought to the Board's attention by the complainant in paragraph (a) of this section, and respond to the complainant, in writing. If the Board has not responded to the complainant, in writing, or if the complainant is not satisfied with the Board's attempt to resolve the matter, the complainant may request the Commission to review whether the Board

has complied with the terms of the settlement agreement or the final decision. The complainant may file such request for review 35 days after he or she has served the Board with the notice of allegations of noncompliance, but must file the request for review with the Commission within 30 days of his or her receipt of a Board's determination. The complainant must serve a copy of the request for review on the Board and the Board may submit a response to the Commission within 30 days of receiving notice of request for review.

(c) Prior to rendering its determination, the Commission may request that the parties submit whatever additional information or documentation they deem necessary, or it may direct that an investigation or hearing on the matter be conducted. If the Commission determines that the Board is not in compliance and the noncompliance is not attributable to acts or conduct of the complainant, 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 §§ 268.205 or 268.305 of this part, as appropriate, rather than under this section.

§ 268.505 Civil action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act.

A complainant who has filed an individual complaint, an agent of the class who has filed a class complaint or a claimant who has filed a claim for individual relief pursuant to a class complaint may file a civil action in an appropriate United States District Court alleging violations of Title VII, the ADEA or the Rehabilitation Act:

(a) Within 90 days of receipt of the Board's final decision on an individual or class complaint, whether or not a request for review has been filed with the Commission;

(b) After 180 days from the date of filing an individual or class complaint if a request for review by the Commission has not been filed and a final decision of the Board has not been issued;

(c) Within 90 days of receipt of an EEOC decision; or

(d) After 180 days from the date of filing a request for review with the Commission if an EEOC decision has not been issued by the Commission.

§ 268.506 Civil action: Equal Pay Act.

A complainant may file a civil action under section 16(b) of the Fair Labor Standards Act (29 U.S.C. 216(b)) in a court of competent jurisdiction within two years or, if the violation is willful, three years of the date of the alleged violation of the Equal Pay Act regardless of whether he or she pursued any administrative complaint processing. Recovery of back wages under the Equal Pay Act is limited to two years prior to the date of filing suit, or to three years if the violation is deemed willful. Liquidated damages in an equal amount may also be awarded. The filing of a complaint or request for review with the Commission under this part shall not toll the time for filing a civil action.

[59 FR 16098, Apr. 6, 1996, as amended at 61 FR 13079, Mar. 26, 1996]

§ 268.507 Effect of filing a civil action.

Filing a civil action under §§ 268.505 or 268.506 of this part shall terminate the Commission's processing of any request for review. If a private suit is filed subsequent to the filing of a request for review, the parties shall notify the Commission of such filing in writing.

Subpart F—Matters of General Applicability

§ 268.601 EEO group statistics.

(a) The Board shall collect and maintain accurate employment information on the race, national origin, sex and disabilities of its employees.

(b) Data on race, national origin and sex shall be collected by voluntary self-identification. If an employee does not voluntarily provide the requested information, the Board shall advise the employee of the importance of the data and of the Board's obligation to report it. If the employee still refuses to provide the information, the Board shall make a visual identification and inform the employee of the data it will be reporting. If the Board believes that

information provided by an employee is inaccurate, the Board shall advise the employee that the purpose for which the data is being collected is solely statistical, of the need for accuracy, of the Board's recognition of the sensitivity of the information, and of the existence of procedures to prevent its unauthorized disclosure. If, thereafter, the employee declines to change the apparently inaccurate self identification, the Board shall accept it.

(c) Subject to applicable law, the information collected under paragraph (b) of this section shall be disclosed only in the form of gross statistics. The Board will not collect or maintain any information on the race, national origin, or sex of individual employees except in accordance with applicable law and when an automated data processing system is used in accordance with standards and requirements prescribed by the Commission to insure individual privacy and the separation of that information from the employee's personnel record.

(d) The Board's system shall incorporate the following controls:

(1) Only those categories of race and national origin approved by the Commission shall be used; and

(2) Only the specific procedures for the collection and maintenance of data that are prescribed or approved by the Commission shall be used.

(e) The Board shall use the data only in studies and analyses that contribute affirmatively to achieving the objectives of the Board's equal employment opportunity program. The Board shall not establish quotas for the employment of persons on the basis of race, color, religion, sex, or national origin.

(f) Data on disabilities shall also be collected by voluntary self-identification. If an employee does not voluntarily provide the requested information, the Board shall advise the employee of the importance of the data and of the Board's obligation to report it. If an employee who has been appointed pursuant to the Board's affirmative action program for hiring individuals with a disability still refuses to provide the requested information, the Board shall identify the employee's disability based upon the records supporting the appointment. If any other

employee still refuses to provide the requested information or provides information that the Board believes to be inaccurate, the Board shall report the employee's disability status as unknown.

(g) The Board shall report to the Commission on employment by race, national origin, sex and disability in the form and at such times as the Board and Commission shall agree.

§ 268.602 Reports to the Equal Employment Opportunity Commission.

(a) The Board shall report to the Commission information concerning pre-complaint counseling and the status, processing, and disposition of complaints under this part at such times and in such manner as the Board and Commission shall agree.

(b) The Board shall advise the Commission whenever it is served with a federal court complaint based upon a complaint that is pending review at the Commission.

(c) The Board shall prepare annually equal employment opportunity plans of actions, in the form requested by the Commission, and shall submit such plans for review and advice by the Commission. The plans of action shall include:

(1) Provision for the establishment of training and education programs designed to provide maximum opportunity for employees to advance so as to perform at their highest potential;

(2) Description of the qualifications, in terms of training and experience relating to equal employment opportunity, of the principal and operating officials concerned with administration of the Board's equal employment opportunity program; and

(3) Description of the allocation of personnel and resources proposed by the Board to carry out its equal employment opportunity program.

§ 268.603 Voluntary settlement attempts.

The Board shall make reasonable efforts to settle, voluntarily, complaints of discrimination as early as possible in, and throughout, the administrative processing of complaints, including the pre-complaint counseling stage. Any settlement reached shall be reduced to

writing and shall be signed by both parties and shall identify the allegations resolved.

§268.604 Filing and computation of time.

(a) All time periods in this part that are stated in terms of days are calendar days unless otherwise stated.

(b) A document shall be deemed timely filed if it is delivered in person, or sent via U.S. mail and postmarked before the expiration of the applicable filing period; or, in the absence of a legible postmark, if it is received via U.S. mail within five days of the expiration of the applicable filing period.

(c) The time limits in this part are subject to waiver, estoppel, and equitable tolling.

(d) The first day counted shall be the day after the event from which the time period began to run and the last day of the period shall be included, unless it falls on a Saturday, Sunday, or Federal holiday, in which case the period shall be extended to include the next business day.

§268.605 Representation and official time.

(a) At any stage in the processing of a complaint, including the counseling stage under §268.204 of this part, the complainant shall have the right to be accompanied, represented and advised by a representative of complainant's choice.

(b) If the complainant is an employee of the Board, he or she shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to Board and Commission requests for information. If the complainant is an employee of the Board and he or she designates another employee of the Board as his or her representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to Board and Commission requests for information. The Board is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. The complainant and the representative, if

employed by the Board and otherwise in a pay status, shall be on official time, regardless of their tours of duty, when their presence is authorized or required by the Board or the Commission during the investigation, informal adjustment, or hearing on the complaint.

(c) In cases where the representation of a complainant or the Board would conflict with the official or collateral duties of the representative, the Board may, after giving the representative an opportunity to respond, disqualify the representative.

(d) Unless the complainant states otherwise in writing, after the Board has received written notice of the name, address and telephone number of a representative, all official correspondence shall be with the representative with copies to the complainant. When the complainant designates an attorney as representative, service of documents and decisions on the complaint shall be made on the attorney and not on the complainant, and time frames for receipt of materials by the complainant shall be computed from the time of receipt by the attorney. The complainant must serve all official correspondence on the designated representative of the Board.

(e) The complainant shall at all times be responsible for proceeding with the complaint whether or not he or she has designated a representative.

(f) Witnesses who are Board employees shall be in a duty status when their presence is authorized or required in connection with a complaint.

§268.606 Joint processing and consolidation of complaints.

Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter, or two or more complaints of discrimination from the same complainant, may be consolidated by the Board for joint processing after appropriate notification to the parties. The date of the first filed complaint controls the applicable time frames under subpart B of this part.

Subpart G—Prohibition Against Discrimination In Board Programs and Activities Because of a Physical or Mental Disability

§ 268.701 Purpose and application.

(a) *Purpose.* The purpose of this subpart G is to prohibit discrimination on the basis of a disability in programs or activities conducted by the Board.

(b) *Application.* (1) This subpart G applies to all programs and activities conducted by the Board. Such programs and activities include:

(i) Holding open meetings of the Board or other meetings or public hearings at the Board's office in Washington, DC;

(ii) Responding to inquiries, filing complaints, or applying for employment at the Board's office;

(iii) Making available the Board's library facilities; and

(iv) Any other lawful interaction with the Board or its staff in any official matter with people who are not employees of the Board.

(2) This subpart G does not apply to Federal Reserve Banks or to financial institutions or other companies supervised or regulated by the Board.

§ 268.702 Notice.

The Board shall make available to employees, applicants for employment, participants, beneficiaries, and other interested persons information regarding the provisions of this subpart G and its applicability to the programs and activities conducted by the Board, and make this information available to them in such manner as the Board finds necessary to apprise such persons of the protections against discrimination assured them by this subpart G.

§ 268.703 Prohibition against discrimination.

(a) No qualified individual with a disability shall, on the basis of a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity conducted by the Board.

(b)(1) The Board, in providing any aid, benefit, or service, may not, di-

rectly or through contractual, licensing, or other arrangements, on the basis of a disability:

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that provide to others;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with a disability or to any class of individuals with a disability than is provided to others unless such action is necessary to provide qualified individuals with a disability with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Board may not deny a qualified individual with a disability the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Board may not, directly or through contractual or other arrangements, utilize criteria or methods of administration, the purpose or effect of which would:

(i) Subject qualified individuals with a disability to discrimination on the basis of a disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with a disability.

(4) The Board may not, in determining the site or location of a facility,

make selections the purpose or effect of which would:

(i) Exclude individuals with a disability from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Board; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with a disability.

(5) The Board, in the selection of procurement contractors, may not use criteria that subject qualified individuals with a disability to discrimination on the basis of a disability.

(6) The Board may not administer a licensing or certification program in a manner that subjects qualified individuals with a disability to discrimination on the basis of a disability, nor may the Board establish requirements for the programs and activities of licensees or certified entities that subject qualified individuals with a disability to discrimination on the basis of a disability. However, the programs and activities of entities that are licensed or certified by the Board are not, themselves, covered by this subpart G.

(c) The exclusion of individuals who do not have a disability from the benefits of a program limited by Federal statute or Board order to individuals with a disability or the exclusion of a specific class of individuals with a disability from a program limited by Federal statute or Board order to a different class of individuals with a disability is not prohibited by this subpart G.

(d) The Board shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with a disability.

§ 268.704 Employment.

No qualified individual with a disability shall, on the basis of a disability, be subjected to discrimination in employment under any program or activity conducted by the Board. The requirements and procedures of § 268.303 of this part shall apply to discrimination in employment under this subpart G.

§ 268.705 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 268.706 of this part, no qualified individual with a disability shall, because the Board's facilities are inaccessible to or unusable by individuals with a disability, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Board.

§ 268.706 Program accessibility: Existing facilities.

(a) *General.* The Board shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with a disability. This paragraph (a) does not:

(1) Necessarily require the Board to make each of its existing facilities accessible to and usable by individuals with a disability; or

(2) Require the Board to take any action that it can determine, based on a written record, would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board shall establish a written record showing that compliance with this paragraph (a) would result in such alterations or burdens. The decision that compliance would result in such alterations or burdens shall be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with a disability receive the benefits and services of the program or activity.

(b) *Methods.* The Board may comply with the requirements of this subpart

G through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to individuals with a disability, home visits, delivery of service at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with a disability. The Board is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this subpart G. In choosing among available methods for meeting the requirements of this subpart G, the Board gives priority to those methods that offer programs and activities to qualified individuals with a disability in the most integrated setting appropriate.

(c) *Time period for compliance.* The Board shall comply with any obligations established under this subpart G as expeditiously as possible.

§268.707 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Board, shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with a disability.

§268.708 Communications.

(a) The Board shall take appropriate steps to ensure effective communication with applicants for employment, participants, personnel of other Federal entities, and members of the public.

(1) The Board shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Board.

(i) In determining what type of auxiliary aid is necessary, the Board shall give primary consideration to the requests of the individual with a disability.

(ii) The Board need not provide individually prescribed devices, readers for

personal use or study, or other devices of a personal nature.

(2) Where the Board communicates with employees and others by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The Board shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Board shall provide signs at a primary entrance to any inaccessible facility, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This subpart G does not require the Board to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board shall establish a written record showing compliance with this subpart G would result in such alterations or burdens. The determination that compliance would result in such alterations or burdens shall be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart G would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with a disability receive the benefits and services of the program or activity.

§ 268.709 Compliance procedures.

(a) *Applicability.* Notwithstanding any other provision of this part, this section, except as provided in paragraph (b) of this section, rather than subpart B and § 268.305 of this part, shall apply to all allegations of discrimination on the basis of a disability in programs or activities conducted by the Board.

(b) *Employment complaints.* The Board shall process complaints alleging discrimination in employment on the basis of a disability in accordance with subpart B and § 268.305 of this part.

(c) *Responsible official.* The EEO Programs Director shall be responsible for coordinating implementation of this section.

(d) *Filing the complaint—(1) Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this subpart G may, personally or by his or her authorized representative, file a complaint of discrimination with the EEO Programs Director.

(2) *Confidentiality.* The EEO Programs Director shall not reveal the identity of any person submitting a complaint, except when authorized to do so in writing by the complainant, and except to the extent necessary to carry out the purposes of this subpart G, including the conduct of any investigation, hearing, or proceeding under this subpart G.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The EEO Programs Director may extend this time limit for good cause shown. For the purpose of determining when a complaint is timely filed under this paragraph (d), a complaint mailed to the Board shall be deemed filed on the date it is post-marked. Any other complaint shall be deemed filed on the date it is received by the Board.

(4) *How to file.* Complaints may be delivered or mailed to the Administrative Governor, the Staff Director for Management, the EEO Programs Director, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Disabled Persons Program Coordinator. Complaints should be sent to the EEO Programs Director, Board of Governors of the Federal Reserve System, 20th and C Street NW., Wash-

ington, DC 20551. If any Board official other than the EEO Programs Director receives a complaint, he or she shall forward the complaint to the EEO Programs Director.

(e) *Acceptance of complaint.* (1) The EEO Programs Director shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the Board has jurisdiction. The EEO Programs Director shall notify the complainant of receipt and acceptance of the complaint.

(2) If the EEO Programs Director receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the EEO Programs Director shall dismiss the complaint without prejudice.

(3) If the EEO Programs Director receives a complaint over which the Board does not have jurisdiction, the EEO Programs Director shall notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) *Investigation/conciliation.* (1) Within 180 days of the receipt of a complete complaint, the EEO Programs Director shall complete the investigation of the complaint, attempt informal resolution of the complaint, and if no informal resolution is achieved, the EEO Programs Director shall forward the investigative report to the Staff Director for Management.

(2) The EEO Programs Director may request Board employees to cooperate in the investigation and attempted resolution of complaints. Employees who are requested by the EEO Programs Director to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The EEO Programs Director shall furnish the complainant with a copy of the investigative report promptly after completion of the investigation and provide the complainant with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement

shall be reduced to writing and made a part of the complaint file, with a copy of the agreement provided to the complainant. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant has agreed.

(g) *Letter of findings.* (1) If an informal resolution of the complaint is not reached, the EEO Programs Director shall transmit the complaint file to the Staff Director for Management. The Staff Director for Management shall, within 180 days of the receipt of the complete complaint by the EEO Programs Director, notify the complainant of the results of the investigation in a letter sent by certified mail, return receipt requested, containing:

- (i) Findings of fact and conclusions of law;
- (ii) A description of a remedy for each violation found;
- (iii) A notice of right of the complainant to appeal the letter of findings under paragraph (k) of this section; and
- (iv) A notice of right of the complainant to request a hearing.

(2) If the complainant does not file a notice of appeal or does not request a hearing within the times prescribed in paragraph (h)(1) and (j)(1) of this section, the EEO Programs Director shall certify that the letter of findings under this paragraph (g) is the final decision of the Board at the expiration of those times.

(h) *Filing an appeal.* (1) Notice of appeal, with or without a request for hearing, shall be filed by the complainant with the EEO Programs Director within 30 days of receipt from the Staff Director for Management of the letter of findings required by paragraph (g) of this section.

(2) If the complainant does not request a hearing, the EEO Programs Director shall notify the Board of Governors of the appeal by the complainant and that a decision must be made under paragraph (k) of this section.

(i) *Acceptance of appeal.* The EEO Programs Director shall accept and process any timely appeal. A complainant may appeal to the Administrative Governor from a decision by the EEO Programs Director that an appeal is untimely. This appeal shall be filed with-

in 15 calendar days of receipt of the decision from the EEO Programs Director.

(j) *Hearing.* (1) Notice of a request for a hearing, with or without a request for an appeal, shall be filed by the complainant with the EEO Programs Director within 30 days of receipt from the Staff Director for Management of the letter of findings required by paragraph (g) of this section. Upon a timely request for a hearing, the EEO Programs Director shall request that the Board of Governors, or its designee, appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to the complainant and the Board specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 calendar days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557. The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary actions to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to:

- (i) Arrange and change the dates, times, and places of hearings and pre-hearing conferences and to issue notice thereof;
- (ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;
- (iii) Require parties to state their positions in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;
- (iv) Examine witnesses and direct witnesses to testify;
- (v) Receive, rule on, exclude, or limit evidence;
- (vi) Rule on procedural items pending before him or her; and
- (vii) Take any action permitted to the administrative law judge as authorized by this subpart G or by the

provisions of the Administrative Procedure Act (5 U.S.C. 554-557).

(3) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph (j), but rules or principles designed to assure production of credible evidence and to subject testimony to cross-examination shall be applied by the administrative law judge wherever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(4) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Employees of the Board shall, upon the request of the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing, at the request of the administrative law judge and with the approval of the employing agency, shall be on official duty status during any absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the Board to pay travel expenses necessary for the complainant to attend the hearing.

(v) The Board shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the parties incurring them.

(5) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to the complainant and the EEO Programs Director within 30 days,

after the receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcripts are made. This time limit may be extended with the permission of the EEO Programs Director.

(6) Within 15 calendar days after receipt of the recommended decision of the administrative law judge, the complainant may file exceptions to the recommended decision with the EEO Programs Director. On behalf of the Board, the EEO Programs Director may, within 15 calendar days after receipt of the recommended decision of the administrative law judge, take exception to the recommended decision of the administrative law judge and shall notify the complainant in writing of the Board's exception. Thereafter, the complainant shall have 10 calendar days to file reply exceptions with the EEO Programs Director. The EEO Programs Director shall retain copies of the exceptions and replies to the Board's exception for consideration by the Board. After the expiration of the time to reply, the recommended decision shall be ripe for a decision under paragraph (k) of this section.

(k) *Decision.* (1) The EEO Programs Director shall notify the Board of Governors when a complaint is ripe for decision under this paragraph (k). At the request of any member of the Board of Governors made within 3 business days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director for Management if he or she is delegated the authority to do so under §268.103(a)(2) of this part, shall make the decision on the complaint. The decision shall be made based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of the receipt by the EEO Programs Director of the notice of appeal and investigative record pursuant to paragraph (h)(1) of this section or 60 days following the end of the period for filing reply exceptions set forth in paragraph (j)(6) of this section, whichever is applicable. If the decision-maker under this paragraph (k) determines that additional information is needed from any party, the decision-

maker shall request the information and provide the other party or parties an opportunity to respond to that information. The decision-maker shall have 60 days from receipt of the additional information to render the decision on the appeal. The decision-maker shall transmit the decision by letter to all parties. The decision shall set forth the findings, any remedial actions required, and the reasons for the decision. If the decision is based on a hearing record, the decision-maker shall consider the recommended decision of the administrative law judge and render a final decision based on the entire record. The decision-maker may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) The Board shall take any action required under the terms of the decision promptly. The decision-maker may require periodic compliance reports specifying:

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final Board decision has not been taken; and

(iii) The steps being taken to ensure full compliance.

(3) The decision-maker may retain responsibility for resolving disputes that arise between parties over interpretation of the final Board decision, or for specific adjudicatory decisions arising out of implementation.

PART 269—POLICY ON LABOR RELATIONS FOR THE FEDERAL RESERVE BANKS

Sec.

269.1 Definition of a labor organization.

269.2 Membership in a labor organization.

269.3 Recognition of a labor organization and its relationship to a Federal Reserve Bank.

269.4 Determination of appropriate bargaining unit.

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269.10 Time for internal labor organization business, consultations and negotiations.

269.11 Federal Reserve System Labor Relations Panel.

269.12 Amendment.

AUTHORITY: Sec. 11, 38 Stat. 261; 12 U.S.C. 248.

SOURCE: 48 FR 32331, July 15, 1983, unless otherwise noted.

§ 269.1 Definition of a labor organization.

When used in this part, the term *labor organization* means any lawful organization of any kind, or any employee representation group, which exists for the purpose, in whole or in part, of dealing with any Federal Reserve Bank concerning grievances, personnel policies and practices, or other matters affecting the working conditions of its employees, but the term shall not include any organization:

(a) Which asserts the right to strike against the government of the United States, the Board of Governors of the Federal Reserve System, or any Federal Reserve Bank, or to assist or participate in any such strike, or which imposes a duty or obligation to conduct, assist or participate in any such strike; or

(b) Which fails to agree to refrain from seeking or accepting support from any organization which employs coercive tactics affecting any Federal Reserve Bank's operations; or

(c) Which advocates the overthrow of the constitutional form of the government of the United States; or

(d) Which discriminates with regard to the terms or conditions of membership because of race, color, sex, creed, age or national origin.

§ 269.2 Membership in a labor organization.

(a) Any employee of a Federal Reserve Bank (hereinafter referred to as "Bank") is free to join and assist any existing labor organization or to participate in the formation of a new labor organization, or to refrain from any such activities except that officers and their administrative or confidential assistants, managers and other supervisory personnel, secretaries to all such persons and all employees engaged in Bank personnel work shall not be represented by any labor organization.