

§ 268.205

(2) When class-wide discrimination is not found, but it is found that the class agent is a victim of discrimination, § 268.501 shall apply. The Board shall also, within 60 days of the issuance of the final decision finding no class-wide discrimination, issue the acknowledgment of receipt of an individual complaint as required by § 268.105(d) 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 discrimination is found in the final decision and a class member believes that he or she is entitled to individual relief, the class member may file a written claim with the Board or the Board's EEO Programs Director within 30 days of receipt of notification by the Board of its final decision. Administrative judges shall retain jurisdiction over the complaint in order to resolve any disputed claims by class members. The claim must include a specific, detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that this discriminatory action took place within the period of time for which the Board found class-wide discrimination in its final decision. Where a finding of discrimination against a class has been made, there shall be a presumption of discrimination as to each member of the class. The Board must show by clear and convincing evidence that any class member is not entitled to relief. The administrative judge may hold a hearing or otherwise supplement the record on a claim filed by a class member. The Board or the Commission may find class-wide discrimination and order remedial action for any policy or practice in existence within 45 days of the agent's initial contact with the Counselor. Relief otherwise consistent with this Part may be ordered for the time the policy or practice was in effect. 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 an appeal or a civil action in accordance with subpart E of this part and the applicable time limits.

12 CFR Ch. II (1-1-05 Edition)

§ 268.205 **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(c); 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

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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.

Subpart D—Related Processes

§ 268.301 Negotiated grievance procedure.

When an employee of the Board, which is not an agency subject to 5 U.S.C. 7121(d), is covered by a negotiated grievance procedure, allegations of discrimination shall be processed as complaints under this part, except that the time limits for processing the complaint contained in § 268.105 and for appeal to the Commission contained in § 268.402 may be held in abeyance during processing of a grievance covering the same matter as the complaint if the Board notifies the complainant in writing that the complaint will be held in abeyance pursuant to this section.

§ 268.302 Mixed case complaints.

A *mixed case complaint* is a complaint of employment discrimination filed with the Board based on race, color, religion, sex, national origin, age or dis-

ability related to or stemming from an action that can be appealed to the Merit System Protection Board (MSPB). The complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address. A *mixed case appeal* is an appeal filed with the MSPB that alleges that an appealable Board action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, disability or age. Only a Board employee who is a preference eligible employee as defined by the Veterans Preference Act can file a mixed case complaint with the Board or a mixed case appeal with the MSPB. A mixed case complaint or mixed case appeal may only be filed for action(s) over which the MSPB has jurisdiction. The Board will apply sections 1614.302 to 1614.310 of 29 CFR to the processing of a mixed case complaint or mixed case appeal.

Subpart E—Appeals to the Equal Employment Opportunity Commission

§ 268.401 Appeals to the Equal Employment Opportunity Commission.

(a) A complainant may appeal the Board's final action or dismissal of a complaint.

(b) The Board may appeal as provided in § 268.109(a).

(c) A class agent or the Board may appeal an administrative judge's decision accepting or dismissing all or part of a class complaint; a class agent may appeal a final decision on a class complaint; a class member may appeal a final decision on a claim for individual relief under a class complaint; and a class member, a class agent or the Board may appeal a final decision on a petition pursuant to § 268.204(g)(4).

(d) A complainant, agent of the class or individual class claimant may appeal to the Commission the Board's alleged noncompliance with a settlement agreement or final decision in accordance with § 268.504.