

Federal Reserve System

§ 268.205

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.

§ 268.205 Employment of aliens; Access to sensitive information

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

(1) *Classified Information* means information that is classified for national security purposes under Executive Order No. 12958, entitled "Classified National Security Information," including any amendments or superseding orders that the President of the United States may issue from time to time.

(2) *Confidential Supervisory Information* means confidential supervisory information of the Board, as defined in 12 CFR 261.2(c).

(3) *Country List* refers to the list contained in the annual federal appropriations laws of specific countries, including a general category of "countries allied with the United States in a current defense effort," and the particular Non-Citizens from those countries who are eligible to be hired as Federal employees in the excepted service or in the senior executive service and be paid by appropriated funds. The appropriation ban is codified at 5 U.S.C. 3101 note. The list of eligible countries and Non-Citizens is subject to legislative and other change.

(4) *Employee* means an individual who works full-time or part-time and is ap-

pointed into Board service for a period of more than 90 days. The term "employee" does not include members of the Board.

(5) *FOMC Information* means confidential information of the Federal Open Market Committee (FOMC) regardless of the form or format in which it is created, conveyed, or maintained. FOMC information includes information derived from confidential FOMC materials. Three internal security designations, which are subject to change by the FOMC, apply to FOMC Information as follows:

(i) *Class I FOMC* generally applies to materials containing policymaker input, such as that related to monetary policy decisions at meetings, views expressed by policy makers on future policy, and identification of meeting participants who express particular views. Examples of Class I FOMC Information include, but are not limited to, the "Bluebook," drafts of meeting minutes, unreleased meeting transcripts, documents reflecting the preparation of semi-annual forecasts and related testimony, and certain sensitive internal memorandums and reports.

(ii) *Class II FOMC* covers information that is less sensitive than Class I FOMC. This designation generally applies to staff forecasts prepared for the FOMC and to information about open market operations. Examples of Class II FOMC Information include, but are not limited to, Part I of the "Greenbook," reports of the Manager on domestic and foreign open market operations, and other materials on economic and financial developments.

(iii) *Class III FOMC* covers information that is less sensitive than either Class II or Class I. This designation generally applies to background information supporting policy discussions and includes, but is not limited to, Part II of the Greenbook.

(6) *National* refers to any individual who meets the requirements described in 8 U.S.C. 1408.

(7) *Non-Citizen* refers to any individual who is not a citizen (by birth or naturalization) of the United States.

(8) *Protected Individual* means—

(i) A citizen or National of the United States, or

(ii) An alien who:

(A) Meets the conditions set forth in 8 U.S.C. 1324b(a)(3)(B), as amended, and

(B) Has filed with the Board or the appropriate Federal Reserve Bank a declaration of intention to become a citizen of the United States.

(9) *Sensitive Information* means FOMC Information; Classified Information; and Confidential Supervisory Information.

(b) *Hiring—(1) Prohibition against hiring unauthorized aliens.* An individual is eligible for employment with the Board only if he or she satisfies the requirements of Section 101 of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324a.

(2) *Preference.* Consistent with applicable law, where two applicants for employment at the Board are equally qualified for a position, the Board shall prefer the citizen or National of the United States over the equally qualified Non-Citizen.

(3) *Protected Individuals access to Sensitive Information.* The Board may hire a person to a position that requires access to Sensitive Information if the person is a Protected Individual.

(4) *Non-Citizens access to Sensitive Information.* The Board shall not hire a Non-Citizen, other than a Protected Individual, into a position that requires access to Sensitive Information except in accordance with paragraph (c) below.

(c) *Access to Sensitive Information—(1) Generally.* The Board will grant access to Sensitive Information only in accordance with the Board's rules and policies regarding access to Sensitive Information and, if applicable, the rules and policies of the FOMC.

(2) *FOMC Information—(i) Access by a Non-Citizen from a country on the Country List.* An Employee, other than a Protected Individual, who is a Non-Citizen from a country that is on the Country List on the date the Employee begins employment with the Federal Reserve System shall be granted access to Class I FOMC Information only upon the recommendation of the Employee's Division Director after six years of residence in the United States, at least two of which include satisfactory employment by the Board and/or one or more of the Federal Reserve Banks, and a background investigation accept-

able to the Board. If the Employee's country is deleted from the Country List after the date the Employee begins employment with the Federal Reserve System, the Employee's access to Class II FOMC information will not be affected by the change in the Country List. Similarly, the Employee would continue to be eligible for access to Class I information and may be granted such access if he or she meets the remaining conditions outlined above for employees from a country on the Country List.

(ii) *Access by a Non-Citizen from a country not on the Country List.* An Employee, other than a Protected Individual, who, on the date the Employee begins employment with the Federal Reserve System, is a Non-Citizen from a country that is not on the Country List: (A) Shall not be granted access to Class I FOMC Information, and (B) shall be granted access to Class II FOMC Information only upon the recommendation of the Employee's Division Director after six years of residence in the United States, at least two of which include satisfactory employment by the Board and/or one or more of the Federal Reserve Banks, and a background investigation acceptable to the Board.

(3) *Classified Information.* Access to Classified Information is limited to those persons who are permitted access to Classified Information pursuant to the applicable executive orders and any subsequent amendments or superseding orders that the President of the United States may issue from time to time.

(4) *Confidential Supervisory Information.* Access to Confidential Supervisory Information is limited to Protected Individuals with a need to know employed by the Board or by a Federal Reserve Bank.

[70 FR 67643, Nov. 8, 2005]

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