AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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). Three internal security designations, which are subject to change by the Board, apply to Confidential Supervisory Information. Those designations are:

(i) *Restricted-Controlled FR* generally applies to information that, if disclosed to or modified by unauthorized individuals, might result in the risk of serious monetary loss, serious productivity loss or serious embarrassment to the Federal Reserve System. Examples of Confidential Supervisory Information designated as Restricted-Controlled FR include, but are not limited to, certain significant lists of financial institution supervisory ratings and nonpublic advance information regarding bank mergers or failures.

(ii) *Restricted FR* covers information that is less sensitive than Restricted-Controlled FR information and, in general, is the largest category of Confidential Supervisory Information. This information, if disclosed to or modified by unauthorized individuals, might result in the risk of significant monetary loss, significant productivity loss, or significant embarrassment to the Federal Reserve System. Examples of Confidential Supervisory Information designated as Restricted FR include, but are not limited to, single supervisory ratings (e.g., CAMELS, BOPEC, etc.), Federal Reserve examination and inspection reports and workpapers, Interagency Country Exposure Review Committee (ICERC) country exposure determinations, and shared national credit data or listings.

(iii) *Internal FR* covers information that is less sensitive than Restricted FR or Restricted-Controlled FR and generally applies to information that, if disclosed to or modified by unauthorized individuals, might result in the risk of some monetary loss, some productivity loss, or some embarrassment to the Federal Reserve System. Examples of Confidential Supervisory Information designated as Internal FR include, but are not limited to, foreign banking organization country studies and Federal Reserve risk assessments.

(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,'' from which particular categories of persons who are exempt from a ban on the use of appropriated funds are eligible to be hired as Federal employees in the excepted service or in the senior executive service. The appropriations' ban is codified at 5 U.S.C. 3101 note. The list of eligible countries and persons is subject to legislative and other change.

(4) *Eligible Position* refers to a position or job family requiring access to Sensitive Information for which the Board determines that hiring a Non-Citizen is appropriate.

(5) *Employee* means an individual who works full-time or part-time and is appointed into Board service for a period of more than 90 days. The term ''Employee'' does not include members of the Board.

(6) *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.

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

(8) *Non-Citizen* refers to any individual who is not a Protected Individual.

(9) *Protected Individual* means—

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

(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, or

(iii) An alien who:

(A) Is lawfully admitted for permanent residence, is admitted for temporary residence under 8 U.S.C. 1160(a) or section 1255a(a)(1), is admitted as a refugee under 8 U.S.C. 1157, or is granted asylum under 8 U.S.C. 1158;

(B) Was an Employee of the Board or a Federal Reserve Bank on January 1, 2006;

(C) Before requesting access to Sensitive Information filed an application for U.S. citizenship; and

(D) Has had his or her application for citizenship pending for two years or less, unless in the case of an application pending for a longer period, the alien can establish that the alien is actively pursuing naturalization. Time consumed by the Department of Homeland Security, Citizenship and Immigration Services (or its predecessor or successor agency) in processing the application shall not be counted toward the 2-year period.

(10) *Sensitive Information* means FOMC Information, Classified Information, and Confidential Supervisory Information.

(b) *Hiring and access*—(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 person who is not a citizen or National of the United States.

(3) *Protected Individuals' access to Sensitive Information.* The Board may hire a person as an Employee into 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 into a position that requires access to Sensitive Information unless the Non-Citizen:

(i) Is in an Eligible Position; and

(ii) Meets the requirements of paragraph (c) of this section allowing access to Sensitive Information.

(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. Access to any level of Sensitive Information includes access to all lower levels of that type of Sensitive Information. An Employee who is not a Protected Individual may not have access to FOMC Information or Confidential Supervisory Information unless otherwise permitted by this paragraph (c).

(2) *FOMC Information*—(i) *Access by a Non-Citizen from a country on the Country List.* An Employee in an Eligible Position who is a Non-Citizen from a country that, on the date the Employee begins employment with the Federal Reserve System or on the date access is granted, is on the Country List shall be granted access to Class I FOMC Information only if the Employee:

(A) Has been recommended for such access by the Employee's Division Director;

(B) Has been resident in the United States for at least six years, at least two of which include satisfactory employment with the Board and/or one or more of the Federal Reserve Banks; and

(C) Has completed a background investigation acceptable to the Board.

(ii) *Access by a Non-Citizen from a country not on the Country List.* An Employee in an Eligible Position who is a Non-Citizen from a country that, on the date the Employee begins employment with the Federal Reserve System and on the date access is granted, 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:

(*1*) The recommendation of the Employee's Division Director;

(*2*) 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

(*3*) Completion of a background investigation acceptable to the Board.

(iii) *Changes to the Country List.* 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 existing access to Class I or 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 in paragraph (c)(2)(i) for employees from a country on the Country List.

(3) *Confidential Supervisory Information*—(i) *Access by a Non-Citizen from a country on the Country List.* An Employee in an Eligible Position who is a Non-Citizen from a country that, on the date the Employee begins employment with the Federal Reserve System or on the date access is granted, is on the Country List shall be granted access to Confidential Supervisory Information designated as Restricted-Controlled FR only if the Employee:

(A) Has been recommended for such access by the Employee's Division Director;

(B) Has been resident in the United States for at least six years, at least two of which include satisfactory employment with the Board and/or one or more of the Federal Reserve Banks; and

(C) Has completed a background investigation acceptable to the Board.

(ii) *Access by a Non-Citizen from a country not on the Country List.* An Employee in an Eligible Position who is a Non-Citizen from a country that, on the date the Employee begins employment with the Federal Reserve System and on the date access is granted, is not on the Country List:

(A) Shall not be granted access to Confidential Supervisory Information designated as Restricted-Controlled FR; and

(B) Shall be granted access to Confidential Supervisory Information designated as Restricted FR only upon:

(*1*) The recommendation of the Employee's Division Director;

(*2*) 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

(*3*) Completion of a background investigation acceptable to the Board.

(iii) *Changes to the Country List.* 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 existing access to Confidential Supervisory Information designated as Restricted FR or Restricted-Controlled FR will not be affected by the change in the Country List. Similarly, the Employee would continue to be eligible for access to Confidential Supervisory Information designated as Restricted-Controlled FR information and may be granted such access if he or she meets the remaining conditions outlined in paragraph (c)(3)(i) for employees from a country on the Country List.

(4) *Access to Sensitive Information by Reserve Bank employees*—(i) *FOMC Information.* A Reserve Bank employee will be granted access to FOMC Information in accordance with the rules of the FOMC.

(ii) *Confidential Supervisory Information.* A Reserve Bank employee will be granted access to Confidential Supervisory Information only to the extent the employee meets all of the requirements for access to Confidential Supervisory Information provided in this paragraph (c) and the employee has received approval for such access from the Board's Director for Banking Supervision and Regulation. Notwithstanding the foregoing, this rule does not affect access that has been granted to employees hired before the effective date of this rule.

(5) *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.

[71 FR 44558, Aug. 7, 2006]

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 disability 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.