

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