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FEDERAL RESERVE SYSTEM

12 CFR Part 268

[Docket No. R-1096]

Rules Regarding Equal Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) has adopted a final rule that amends its "Rules Regarding Equal Opportunity," which establishes programs and procedures to promote equal opportunity for Board employees. This rule was published on January 25, 2001, in the **Federal Register** as an immediately effective interim rule with opportunity for public comment. The Board received one public comment on this rule. The Board is now adopting the interim rule as a final rule with substantive changes to sections in the rule that address the Rehabilitation Act. These substantive changes are being made because after the Board adopted its interim rule, the Equal Employment Opportunity Commission (Commission), after public comment, adopted changes to the provisions in its parallel regulation entitled "Federal Sector Equal Employment Opportunity," 29 CFR part 1614, that address the Rehabilitation Act. The substantive changes to the Board's final rule, which incorporates changes to the Commission's regulation on the Rehabilitation Act, also respond to the comment that the Board received on its rule.

DATES: This final rule is effective immediately and applies to all Board equal employment opportunity (EEO) complaints pending at any stage of the administrative process as of April 15, 2003.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On January 2, 2001, the Board approved the revision of the Board's "Rules Regarding Equal Opportunity" as an immediately effective interim rule with opportunity for comment. The rule was published in the **Federal Register** on January 25, 2001 (66 FR 7703). The interim rule revised the Board's existing regulation entitled "Rules on Equal Opportunity," 12 CFR part 268, to incorporate the November 1999 changes made by the Equal Employment Opportunity Commission (Commission) to its parallel regulation entitled "Federal Sector Equal Employment Opportunity," 29 CFR part 1614, governing equal employment opportunity in the federal government generally. As explained in the preamble to the interim rule, this amendment is consistent with the Board's past practice as the Board's rule is modeled after and, in most respects, is identical to the Commission's regulation. The interim rule also made additional changes to the Board's regulation to bring it into closer conformance with the Commission's regulation. In a few instances, the interim rule continued distinctions between the Board's rule and the Commission's rule that reflect the Board's statutorily mandated independence.

One comment was received. The commentator, the Commission, suggested that rather than adopt a separate regulation governing the processing of complaints of discrimination, the Board should adopt the Commission's Government-wide complaint processing procedures. As the Board has pointed out in prior amendments to part 268, however, the Board believes that based on the specific provisions of the Federal Reserve Act and established precedent, the adoption of part 268 is necessary to authorize and ensure the Board's compliance with important national laws and policies prohibiting discrimination in employment on the basis of race, color,

religion, sex, national origin, age, disability, or retaliation.

The Commission also questioned five provisions in the Board's rule that differ from the corresponding provisions in the Commission's rule on employee EEO complaints. Three of the provisions retain authority for the Board as to a decision issued by the Commission on employee complaints of discrimination. The Commission expressed concerns that it is not clear how these provisions relate to the Commission's rule or to the sections in the interim rule that set forth the time periods for a complainant to file a civil action. The other two provisions regard the overall relationship between the Commission and the Board and address how the Board will provide EEO program information to the Commission. Except as discussed below, the Board adopts the interim rule as a final rule.

As an initial matter, it should be noted that all of the provisions that the Commission points to as differing from its regulation are updated provisions rather than new provisions. Similar provisions were contained in the Board's rule on equal opportunity prior to the adoption of the interim rule on January 25, 2001. While the Board recognizes that the provisions in question retain authority that is not found in the Commission's regulation, the Board believes the retention of authority is necessary to comply with its statutorily mandated independence while also complying with the laws prohibiting discrimination in employment. The provisions at issue are based on the Board's traditional view of its authority under the Federal Reserve Act, which provides that the "employment, compensation, leave, and expenses" of Board employees is governed solely by that Act. Section 10(4).¹ The provisions address areas that the Board believes affect its independence and thus the distinctions are appropriate. As explained in the preamble to the interim rule, however, the Board has minimized, to the greatest extent possible, distinctions between its rule and the Commission's rule. Accordingly, with the few exceptions noted by the Commission, the Board's interim rule closely conforms to the Commission's rule. The Board will continue to work with the Commission

¹ 12 U.S.C. 244.