

**REPORT FOR THE SPECIAL REVIEW COMMITTEE OF
THE BOARD OF DIRECTORS OF
THE FEDERAL DEPOSIT INSURANCE CORPORATION**

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EXECUTIVE SUMMARY

The Special Review Committee of the FDIC's Board of Directors appointed our firm to conduct an independent review of allegations of sexual harassment and interpersonal misconduct at the FDIC, including hostile, abusive, unprofessional, or inappropriate conduct, as well as management's response to these allegations. The review also covered the FDIC's workplace culture, including any practices that might discourage or deter the reporting of this type of misconduct.¹ We have completed our review, and find that, for far too many employees and for far too long, the FDIC has failed to provide a workplace safe from sexual harassment, discrimination, and other interpersonal misconduct. We also find that a patriarchal, insular, and risk-averse culture has contributed to the conditions that allowed for this workplace misconduct to occur and persist, and that a widespread fear of retaliation, as well as a lack of clarity and credibility around internal reporting channels, has led to an under-reporting of workplace misconduct over the years. Management's responses to allegations of misconduct, as well as the culture and conditions that gave rise to them, have been insufficient and ineffective. To fully and effectively address this conduct and these conditions, we believe cultural and structural change is necessary. Following an independent and comprehensive review, we set forth in this Report our factual findings, assessment of root causes, and recommendations.

FDIC employees at all levels care deeply about and take great pride in its mission of maintaining stability and public confidence in our nation's financial system. They deserve and demand a workplace free of sexual harassment, discrimination, and interpersonal misconduct. But for too many, they do not have it. Over 500 individuals bravely reported into our hotline, often painfully and emotionally recounting experiences of sexual harassment, discrimination, and other interpersonal misconduct that they have suffered at the FDIC. Those who reported expressed fear, sadness, and anger at what they had to endure. Many had never reported their experiences to anyone before, while others who had reported internally were left disappointed by the FDIC's response. Virtually all of them expressed hope that reporting what they had gone through now might help change and make better the agency that they care about deeply. While being careful not to unnecessarily publish accounts of distressing experiences reported to us, we set forth certain generalized accounts below, with the consent of those who provided them, as we believe doing so is necessary and important to facilitate an understanding of what FDIC employees have gone through and the steps needed to address them.

- One employee described to us how she feared deeply for her physical safety after a colleague who had been stalking her continued to text her even after she made a complaint against him for, among other things, sending unwelcome sexualized text messages that feature partially naked women engaging in sexual acts.²

¹ *Memorandum to an Action of the Board of Directors on November 20, 2023, Notational Vote (NV)-2023-20.*

² Witness 605. In citing to information obtained from individuals, whether through the hotline reports or from separately conducted interviews, we cite to the individuals in the format of "Witness #" to preserve confidentiality. Some citations to information from witnesses are illustrative examples and may not include every witness who made a similar point.

- Another reported to us the awful moment when her supervisor, discussing difficulties he and his wife were having conceiving a child, had said to her with a smile and looking directly at her, “I know I technically can’t ask you [to be a surrogate] since I’m your boss.”³
- Women in one field office recounted how, to their dismay, it became routine to hear their supervisor talk about their breasts and legs and his sex life.⁴
- A woman examiner reported on the shock of receiving a picture of an FDIC senior examiner’s private parts out of the blue while serving on detail in a field office, only to be told later by others in that field office that she should stay away from him because he had a “reputation.”⁵
- Individuals reported that an employee with a disability was being made fun of by a supervisor, including being called “Pirate McNasty.”⁶
- Certain employees from underrepresented groups reported on how demoralizing it was to be told by colleagues that they were “only hired” because they were a member of an underrepresented group and were “token” employees hired to fill a quota.⁷
- A number of employees recounted homophobic statements made by their Field Office Supervisor, including referring to gay men as “little girls,” resulting in one of them, at least, believing he had to hide that he was gay.⁸

Many of these incidents arose in the field and regional offices, but they also occurred in headquarters. The hotline reports reflected long-standing issues that continue to this day; some happened as recently as within the last few weeks, while others took place years ago. And although a few reports came from former employees, most were made by current FDIC employees who personally experienced the incidents and continue today to be deeply impacted by them.

These incidents, and many others like them, did not occur in a vacuum. They arose within a workplace culture that is “misogynistic,” “patriarchal,” “insular,” and “outdated”—a “good ol’ boys” club where favoritism is common, wagons are circled around managers, and senior executives with well-known reputations for pursuing romantic relations with subordinates enjoy long careers without any apparent consequence. Many reported that in this culture, wrongdoers are not held to account for their misconduct. Instead, they are just moved around to other offices and roles. As one executive at the FDIC put it, the FDIC’s

³ Witness 72.

⁴ Witness 449; Witness 284; Witness 605.

⁵ Witness 602.

⁶ Witness 451; Witness 517.

⁷ Witness 219; Witness 485.

⁸ Witness 359; Witness 653; Witness 451.

response to interpersonal misconduct is “pay, promote, or move them.”⁹ In fact, according to the FDIC’s own public reporting, of the ninety-two harassment complaints made through its Anti-Harassment Program in the nine year period from 2015 to 2023, not a single one resulted in removal, reductions in grade or pay, or any discipline more serious than a suspension.¹⁰ Of those ninety-two, just two resulted in suspensions, two in letters of reprimand, and twelve in counseling, warnings, or trainings. The rest led to no discipline at all. This lack of accountability stems in part from a risk averse culture that focuses excessively on the risks associated with taking disciplinary action, while not sufficiently taking into account the institutional damage that can be caused by years of not holding people sufficiently accountable.

The workplace misconduct reported to us occurred within an institutional structure characterized by strict hierarchies and severe power imbalances. Commissioned bank examiners controlled the destinies of junior examiners trying to get commissioned. Heads of field and regional offices, far removed from headquarters, ran their offices like “fiefdoms.” And throughout the agency, division and regional leaders—virtually all with decades of experience at the agency—filled the manager ranks with other equally long-serving colleagues. This structure has led to a stagnancy and stubbornness that has stunted progress in workplace culture. As one employee reported into the hotline, “whoever I tell [about workplace misconduct], they will protect each other. They’ve worked together 30 years—[and] then who am I?”¹¹ Notably, the over 500 people who reported allegations of misconduct are disproportionately women and people from underrepresented groups. Thus, while many FDIC employees unquestionably experience the FDIC workplace in a positive way, those experiences do not represent the full experiences of those who are not in the majority.

While a few of these allegations of workplace misconduct had been reported internally through official FDIC channels (including at an increased rate since the recent press coverage in late 2023), as reflected in the FDIC’s internal records, most of them had not been previously. FDIC employees fear retaliation and do not trust or understand well the FDIC’s reporting and investigative processes.¹² In a July 2020 report finding that the FDIC “had not established an adequate sexual harassment prevention program,” the FDIC’s Office of Inspector General noted that survey results showed “there may have been an underreporting of sexual harassment allegations.”¹³ The Office of Inspector General report also stated that, of those who reported having experienced sexual harassment in the survey, 38% said they did not report the incident because of “fear of retaliation,” and nearly 40% of all respondents said they “did not know, or were unsure, how to report.”¹⁴ Our review confirmed what the Office of

⁹ Witness 403.

¹⁰ NO FEAR ACT ANNUAL REPORTS TO CONGRESS (2015-2023), summarized below in the “Historical Records Regarding Discrimination, Harassment and Other Complaints” Section of the Report. The statistics in these annual reports cover data from October 1 to September 30 of each year.

¹¹ Witness 271.

¹² Report, “Factual Findings” Section.

¹³ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT i-iii (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

¹⁴ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT iii, 37 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

Inspector General found in 2020, that fear of retaliation at the FDIC remains real and widespread.

As one FDIC employee noted, “[e]veryone knew if you spoke out, you would get a bullseye on [your] back. The few people who did speak up are no longer at the agency.”¹⁵ And as another employee warned, “this organization is like an elephant. Nobody forgets.”¹⁶ One individual who reported into our hotline expressed the fear as follows: “the threat of retribution and payback is real, supervisors rule by fear in the FDIC. Nobody trusts those in charge, and even though this is not getting into the hands of senior execs[,] I’m using a VPN and someone else’s cell phone to write this. I still fear that talking will come back to haunt me.”¹⁷ That this much fear exists, even in reporting anonymously to an independent law firm, indicates that there are likely many others who have not reported and remain fearful of reporting misconduct they have experienced at the FDIC. But the sheer number of reports made to our hotline, compared to the far fewer historically reported and reflected in the FDIC’s records, evidences the extent of the fear, as well as the overall magnitude of the problem. Moreover, issues and concerns about the treatment of women and individuals from underrepresented groups, as well as fear of retaliation, favoritism, and other workplace culture issues, have been raised internally over the years, including to senior leadership at the FDIC. FDIC management’s prior responses to these concerns have been insufficient.

In sum, as discussed in greater detail below in the “Root Cause Analysis” Section of the Report, we find the following to have served as contributing factors—or root causes—for the workplace misconduct and culture issues identified in the Report:

1. Lack of Accountability: A failure over time to hold wrongdoers accountable in a way that is transparent to employees, with wrongdoers being moved around, even promoted, and not disciplined in any meaningful or perceivable way.
2. Fear of Retaliation: A deep-seated and credible fear of retaliation that has prevented employees from raising and reporting issues of workplace misconduct internally.
3. Insufficient Prioritization of Workplace Culture: A failure by management to sufficiently and consistently prioritize a positive workplace culture that aligns with FDIC values for all employees, and a failure to sufficiently emphasize management and leadership skills among managers.
4. Patriarchal, Hierarchic, and Insular Culture: A culture that is “patriarchal,” “hierarchic,” and “insular” with outdated notions of appropriate workplace behavior and interpersonal workplace interactions.

¹⁵ Witness 524.

¹⁶ Witness 465.

¹⁷ Witness 69.

5. Risk Aversion: An overall risk averseness that permeates the institution, including in connection with disciplinary decisions, that has contributed to the lack of accountability.
6. Lack of Clear Guidance: The lack of clear guidance provided to employees on proper workplace behavior and how to address improper workplace behavior, particularly conduct that, although not arising to unlawful conduct, nonetheless violates the FDIC’s policies, Code of Conduct, and values.
7. Abuse of Power Dynamics: Abuse of certain power dynamics and imbalances, including between commissioned examiners and non-commissioned examiners and within field offices, has contributed to conditions that allowed workplace misconduct to occur.
8. Confusing and Ineffective Reporting Channels: A failure by management to implement and communicate effectively about proper reporting channels and processes involved that has contributed to underreporting, and thus, to the insufficient response to allegations and conditions that require redress.
9. Investigative Processes Lack Credibility: Investigative functions that currently lack credibility among employees and are viewed as being protective of management, which has contributed to under-reporting.
10. Insufficient Record Keeping: Failure by management to keep and maintain proper records that would permit the FDIC to understand and keep track of the volume, trends, and other information relating to workplace misconduct. Inadequate record keeping, identified as a specific issue in the Office of Inspector General’s 2020 report on sexual harassment, remains a problem, including in the FDIC’s current efforts to gather records and information following the recent public attention and in response to the various pending inquiries.

To address these root causes, many of which reflect long-standing issues at the FDIC, we believe cultural and structural changes are necessary. Indeed, the FDIC itself has included “Cultural Transformation” as a key pillar in its current Action Plan for creating a “Safe, Fair, and Inclusive Work Environment.”¹⁸ For culture transformation to occur and be successful, it must have the backing and commitment of—and be led by—the FDIC leadership. Many we spoke to recognized the importance for the FDIC to have, in this moment, leadership that can credibly address these serious challenges. To effectively lead through these challenges, the FDIC’s leadership must engage with and be empathetic to employees who have suffered from workplace misconduct, recognize that significant changes are necessary, and pursue such change with sustained commitment and urgency.

On this point, the public reporting that led to our independent review included reports about FDIC Chairman Martin Gruenberg’s reputation for having a temper, as well as at

¹⁸ *Action Plan for a Fair, Safe, and Inclusive Environment* 12, <https://www.fdic.gov/about/diversity/pdf/action-plan-12-4-23-v1.pdf> (last visited Apr. 17, 2024).

least one instance in 2008 of his having “castigated” a senior FDIC executive.¹⁹ Because allegations regarding his conduct led, in part, to the need for an independent review, and because of the undeniable importance of “tone at the top” in any workplace culture, we included allegations about the Chairman’s conduct in our review. In doing so, we have found that, although many have enjoyed entirely professional interactions with him,²⁰ others have in fact continued to experience deeply unsettling exchanges during which he was extremely “harsh,” “aggressive,” and “upset,” particularly when being delivered bad news or conveyed views with which he disagrees.²¹ Although some noted that he merely has a “prosecutorial” questioning style, and is otherwise “low key” and “soft spoken,”²² a number of FDIC employees, including senior executives, recognized the reputation and also reported instances of Chairman Gruenberg losing his temper and interacting with staff in a demeaning and inappropriate manner.²³ A number of executives also noted that, although it ultimately did not prevent them from reporting on issues as necessary, staffers fretted about and delayed delivering news that they feared would upset Chairman Gruenberg,²⁴ and that his reactions did have a “chilling” impact on open communications.²⁵ Although in our interview with him, Chairman Gruenberg stated that he did not recall ever getting angry in meetings with FDIC employees, in addition to the 2008 incident that was the subject of a third-party investigation at the time, we learned of a number of other similar instances that have occurred since, including at least as recently as May 2023 (corroborated by contemporaneous message exchanges), during which FDIC employees experienced Chairman Gruenberg lose his temper and express anger in ways that they felt were offensive and inappropriate.²⁶ Like the reported 2008 incident, the subjects of Chairman Gruenberg’s ire left these meetings feeling verbally attacked personally and in an unfair manner. Other current and former FDIC employees recalled other “difficult moments” where Chairman Gruenberg berated them and his temper came out in upsetting ways, although without recalling specific dates or wanting to remain anonymous for purposes of their report to us.²⁷ Indeed, following the November 16, 2023 *Wall Street Journal* article that discussed his reputation for having a temper, one senior executive noted in a group meeting with Chairman Gruenberg that the article accurately reflected his leadership style, which then led to a tense and awkward discussion among the senior staff about their respective interactions with him.²⁸

While we do not find Chairman Gruenberg’s conduct to be a root cause of the sexual harassment and discrimination in the agency or the long-standing workplace culture issues identified in our review, we do recognize that, as a number of FDIC employees put it in talking about Chairman Gruenberg, culture “starts at the top.” We also note that, having been

¹⁹ Rebecca Ballhaus, FDIC Chair, Known for Temper, Ignored Bad Behavior in Workplace, THE WALL STREET JOURNAL, Nov. 16, 2023.

²⁰ Witness 200; Witness 323; Witness 495; Witness 362; Witness 669; Witness 462.

²¹ Witness 352; Witness 548; Witness 207; Witness 296; Witness 502; Witness 255; Witness 544; Witness 566.

²² Witness 669; Witness 582; Witness 255.

²³ Witness 502; Witness 566; Microsoft Teams Chat (May 19, 2023).

²⁴ Witness 544; Witness 247; Witness 296; Witness 471.

²⁵ Witness 502; Witness 658; Witness 432; Witness 699.

²⁶ Report, “Factual Findings, Conduct of Chairman” Section.

²⁷ Witness 296; Witness 374; Witness 407; Witness 255; Witness 544; Witness 235.

²⁸ Witness 296; Witness 502; Witness 656.

with the FDIC for almost 20 years, and having served as its head for ten of the last thirteen years, leading cultural transformation at an agency that he has led for so long presents unique challenges for Chairman Gruenberg, as do the incidents of—and resulting reputation for—losing his temper and expressing anger with staff. These attributes may hinder his ability to establish trust and confidence in leading meaningful culture change, and so too may his apparent inability or unwillingness to recognize how others experience certain difficult interactions with him. For these challenges to be overcome, there must at least be a genuine and sustained commitment to lead a culture change, accompanied by a recognition and acknowledgement that such change is necessary because of failings of the past, including his own.

To address the root causes of workplace misconduct and culture issues identified in our review, many of which are long-standing and deeply ingrained, we make certain recommendations that we believe will help address them. As many who reported to us have expressed, truly lasting and meaningful change will not be a matter merely of revisions to policies and increased trainings (although those are necessary and important), but must include real cultural and structural transformation. Thus, our recommendations include steps to protect the victims of misconduct, the appointment of a culture and structure transformation monitor, the retention of a third-party expert to assist and advise in implementation, structural changes in the investigations function, an independently run hotline, as well as new and revised policies and trainings. We summarize our recommendations below and describe them in greater detail in the “Recommendations” Section of the Report.

1. Protect the Victims: Ensure that the FDIC takes steps to protect the physical and psychological safety and wellbeing of those who have experienced sexual harassment, discrimination, bullying, or other interpersonal misconduct, including through additional mental health resources.
2. Culture and Structure Transformation: Undertake necessary culture transformation, including through the appointment of a new Culture and Structure Transformation Monitor, with budget, staff, and access to monitor, audit and report on the implementation of the recommended changes, retention of an independent third-party expert to advise and assist the FDIC with implementation, as well as culture surveys and barrier analyses.
3. Hold Leadership Accountable: Hold leadership accountable for ensuring adherence to the FDIC’s values and a Code of Workplace Conduct through more effective performance reviews, 360 reviews, and pulse checks.
4. Policy Enhancements and Additions: Develop additional policies that impact sexual harassment, discrimination, and other interpersonal misconduct and communicate effectively about such policies, including the newly created Anti-Fraternalization Policy and Anti-Retaliation Policy.
5. Enhanced Training Program: Develop and implement a more effective training program on workplace conduct, culture, and leadership for all employees,

including trainings with practical advice to confront different forms of misconduct more broadly.

6. Improved Structures and Procedures: Enhance the structures and procedures responsible for overseeing and implementing the FDIC’s Anti-Harassment Policy and a Code of Workplace Conduct, including a new anonymous hotline, changes in structure of investigations so that they are conducted independently, improved operating procedures, and more complete and reliable record-keeping.
7. Greater Transparency: Develop a more transparent and timely process for communicating about investigations into sexual harassment, all forms of discrimination, and other forms of interpersonal misconduct at the FDIC, including through notice of rights, reporting of statistics, and an annual survey.

* * *

The strength of the FDIC is its thousands of dedicated employees committed to the agency’s mission of maintaining stability and public confidence in our financial system. The public servants at the FDIC—particularly those who courageously came forward to describe their experiences in an effort to improve the agency they care about so deeply—demand and deserve a workplace with a positive culture that is safe from sexual harassment, discrimination, and other forms of interpersonal misconduct. Much as the FDIC and its employees have stepped into the breach time and again to help our nation confront and overcome financial crises, with the requisite commitment and purpose, the FDIC can confront the challenges it faces in creating and maintaining a workplace culture that is worthy of its great people, purpose, and mission.

BACKGROUND OF THE REVIEW

On November 21, 2023, the FDIC Board of Directors (the “FDIC Board”) announced the establishment of a Special Review Committee of the Board of Directors (the “Special Review Committee”) to oversee an independent third-party review of the agency’s workplace culture.²⁹ In this section, we set forth the background and scope of the review, as well as the steps taken in conducting the review.

I. Background and Scope of the Review

On November 13, 2023, the *Wall Street Journal* published an article reporting on a toxic and misogynistic work culture at the FDIC, including examples of persistent sexual harassment, fear of retaliation, and tolerance of a heavy drinking culture. Immediately upon publication of the article, the FDIC announced, through a video from Chairman Martin Gruenberg, that the FDIC does not tolerate harassment or discriminatory behavior and that it had hired a law firm, BakerHostetler, to conduct a “top-to-bottom assessment” of these issues.³⁰ On November 16, the *Wall Street Journal* followed with an article that detailed additional reports of bullying, harassment, and discrimination within the FDIC, including particular incidents involving Chairman Gruenberg, the agency’s General Counsel, and a then-former director of the FDIC Office of Minority and Women Inclusion—as well as allegations that the FDIC leadership had not taken workplace misconduct and discrimination allegations at the agency seriously.³¹

On November 17 and 20, 2023 respectively, the House Financial Services Committee and the House Oversight and Accountability Committee announced that they were opening investigations into the FDIC’s workplace culture and misconduct.³² The FDIC Office of Inspector General also initiated an inquiry into the leadership climate at the agency with regard to harassment and inappropriate behavior and a review of the FDIC’s sexual harassment prevention program.³³ Separate from the investigations, several Senators made requests for information to the FDIC.³⁴

²⁹ FDIC BOARD OF DIRECTORS ESTABLISHES SPECIAL COMMITTEE TO OVERSEE INDEPENDENT REVIEW OF AGENCY CULTURE (Nov. 21, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23093.html>.

³⁰ Rebecca Ballhaus, FDIC Hires Independent Firm to Investigate Alleged Harassment, Discrimination at Regulator, THE WALL STREET JOURNAL, Nov. 13, 2023. The appointment of BakerHostetler was later replaced by our appointment by the Special Review Committee to conduct this review.

³¹ Rebecca Ballhaus, FDIC Chair, Known for Temper, Ignored Bad Behavior in Workplace, THE WALL STREET JOURNAL, Nov. 16, 2023.

³² Letter from Representatives McHenry, Huizenga, and Barr to Chairman Gruenberg dated Nov. 17, 2023, https://financialservices.house.gov/uploadedfiles/2023-11-17_letter_to_gruenberg_final.pdf; Letter from Representatives McClain and Biggs to Chairman Gruenberg dated Nov. 20, 2023, <https://oversight.house.gov/wp-content/uploads/2023/11/FDIC-Sexual-Harassment-and-Discrimination-11202023.pdf>.

³³ FDIC OIG, *Ongoing Work, Audits, Evaluations, and Cyber*, <https://www.fdicigo.gov/ongoing-work> (last visited Apr. 22, 2024).

³⁴ Letter from Senator Ernst to Chairman Gruenberg dated Nov. 29, 2023, <https://www.ernst.senate.gov/imo/media/doc/senernstlettertofdicreworkplacemisconduct.pdf>; Letter from Senators Scott, Tillis, Lummis, Cramer, and Daines to Chairman Gruenberg dated Dec. 7, 2023, https://www.banking.senate.gov/imo/media/doc/ts_letter_to_gruenberg_re_fdic_workplace_culture.pdf.

On November 21, 2023, the FDIC Board announced the establishment of the Special Review Committee, co-chaired by two non-management Board members, to oversee an independent third-party review of the FDIC’s workplace culture.³⁵ Pursuant to the resolution creating it, the Special Review Committee was established “to direct and oversee an independent, third-party review of the FDIC’s workplace and culture, including but not limited to allegations of sexual harassment, all forms of discrimination, a hostile work environment, and other forms of interpersonal misconduct.” In setting forth the “Function, Duties and Authorities” of the Special Review Committee, it provided that the review would examine “(i) allegations of sexual harassment and interpersonal misconduct at the FDIC, including allegations of hostile, abusive, unprofessional, or inappropriate conduct ... and any FDIC management response thereto, and (ii) the FDIC’s workplace culture, including any practices that might discourage or otherwise deter the reporting of [such] [m]isconduct.”³⁶

Following a solicitation process, on December 11, 2023, the Special Review Committee appointed Cleary Gottlieb Steen & Hamilton LLP (“Cleary Gottlieb”) as the third-party firm to conduct the independent review.³⁷

³⁵ FDIC BOARD OF DIRECTORS ESTABLISHES SPECIAL COMMITTEE TO OVERSEE INDEPENDENT REVIEW OF AGENCY CULTURE (Nov. 21, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23093.html>.

³⁶ *Memorandum to an Action of the Board of Directors on November 20, 2023, Notational Vote (NV)-2023-20*.

³⁷ SPECIAL COMMITTEE OF THE FDIC BOARD SELECTS CLEARY GOTTLIEB STEEN & HAMILTON LLP TO CONDUCT INDEPENDENT REVIEW (Dec. 11, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23104.html>.

THE REVIEW PROCESS

I. Hotline Reporting

One of the first steps taken in our review was the creation of a hotline through which reports could be made about sexual harassment and interpersonal misconduct, including allegations of hostile, abusive, unprofessional, or inappropriate conduct, and management’s response to such misconduct. The Special Review Committee announced the creation of the hotline, as well as the means of accessing it through an email address and telephone number set up for this purpose, at the same time it announced the selection of Cleary Gottlieb.³⁸ Based on feedback from FDIC employees seeking alternative means of reporting anonymously, around mid-January 2024, we set up a website where information could be input anonymously, as an additional channel to receive reports. Both in announcements by the Special Review Committee and in our communications with those reporting into the hotline, we committed to receiving reports on a confidential basis and also permitted individuals to make anonymous reports. The FDIC also waived any confidentiality restrictions that would otherwise prevent individuals from disclosing to Cleary Gottlieb allegations of harassment or interpersonal misconduct, or discussing the FDIC’s management response or the workplace culture, including in any settlements.³⁹

In total, we received 541 reports to our hotline. The approximate breakdown of those reports based on the different methods of reporting is set forth below.

<u>Methods of Reporting</u>	<u>Number</u>
Hotline Email Address	174
Hotline Voice Mailbox	118
Hotline Website	203
Other Means (e.g., direct outreach to members of the review team)	46
Total	541

A small number of the reports related to subjects that we determined were out of scope of our review, such as reports concerning other entities or of allegations unrelated to the harassment, discrimination, or other workplace misconduct at the FDIC.⁴⁰ We determined that 510 of the 541 reports related to subjects that fell within the scope of our review.

³⁸ SPECIAL COMMITTEE OF THE FDIC BOARD SELECTS CLEARY GOTTLIB STEEN & HAMILTON LLP TO CONDUCT INDEPENDENT REVIEW (Dec. 11, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23104.html>.

³⁹ *Update from the Board Special Committee; Waiver of Confidentiality Restrictions* (Dec. 21, 2023).

⁴⁰ We also received certain reports into the hotline relating to the FDIC Office of Inspector General (“OIG”). Because the Inspector General Act provides that the Inspector General “shall not report to, or be subject to supervision by, any other officer” of an agency other than the “head of the establishment,” 5 U.S.C. §403(a), we determined that allegations about the OIG rested outside the scope of our review on behalf of the Special Review

Although most of the reports came from current FDIC employees, the hotline reports also included a number from former FDIC employees, as well as a few third-party contractors. The reports included references to experiences at almost all divisions, regions, and functions within the FDIC and spanned many years, with many occurring in the last few years and most being reported by current employees.

II. Document Collection and Review

As part of our review, we gathered and reviewed thousands of documents. The documents we obtained and reviewed included documents relating to the following subjects:

- Allegations and reports relating to sexual harassment, discrimination, and other forms of interpersonal misconduct;
- Disciplinary decisions for conduct involving sexual harassment, discrimination, and other forms of interpersonal misconduct;
- Settlement agreements and related documents in matters involving allegations of sexual harassment or interpersonal misconduct;
- Policies, procedures, and training relating to sexual harassment, discrimination, and other forms of interpersonal misconduct;
- Surveys and other reviews relating to issues impacting workplace culture, including Federal Employee Viewpoint Surveys, “pulse” checks, submissions to internal “Open Exchange” portals, and certain exit survey results;
- The Office of Inspector General reports relating to sexual harassment and other issues that could impact workplace culture;
- Reports and presentations of Employee Resource Groups and the Executive Chairman’s Diversity Advisory Council;
- Prior culture change and workplace culture-related initiatives; and
- Reports and logs relating to allegations of sexual harassment and interpersonal misconduct at or around the FDIC’s Seidman Center (a student residence center) in Arlington, Virginia.

In addition, we conducted certain targeted searches for and reviews of electronic communications, including emails and Teams chat messages around particular times and subjects of interest.

Committee. For allegations relating to the OIG, we consulted with the individuals reporting into the hotline and, with their consent, made appropriate referrals.

III. Witness Interviews

During the course of our review, we conducted 167 interviews of current and former FDIC employees, in addition to the hundreds of interviews conducted with individuals who reported into the hotline. In selecting those to interview, we sought to identify a broad range of individuals from various different regions, divisions, and functions, as well as of different levels of seniority.⁴¹ Our interviews included individuals currently and formerly in the following groups, among others:

- Individuals at different levels of seniority in the Division of Administration, Division of Risk Management Supervision, Division of Depositor and Consumer Protection, Division of Complex Institution Supervision and Resolution, Division of Resolutions and Receiverships, and Office of Minority and Women Inclusion;
- Individuals from various field offices and regions, including from all six regions (Atlanta, Chicago, Dallas, Kansas City, New York, and San Francisco), as well as the Washington, D.C. headquarters;
- Representatives from the Legal Division's Labor, Employment, and Administration Section, as well as the Division of Administration's Labor and Employee Relations Section;
- Individuals from the different functions that play a role in the reporting and investigation of allegations of harassment and other interpersonal misconduct;
- Members of the Executive Chairman's Diversity Advisory Council, ERGs, and union representatives;
- Individuals who directly report to the Chairman;
- Individuals with potentially relevant information relating to certain specific allegations made to us through the hotline reports or otherwise; and
- Other current and former FDIC executives and employees who would have been in a position to provide information relevant to the subjects of the review.⁴²

⁴¹ In general, the FDIC employees we asked to interview as part of our review cooperated and participated in the interviews. We were able to interview each FDIC employee we believed important and necessary for our findings set forth in this Report. To the extent there were FDIC employees we were not able to interview, we do not believe that the information from them would have materially impacted our findings or recommendations.

⁴² A number of former employees we reached out to did not respond and others noted that they would prefer not to speak to us out of concern that their current professional circumstances might be negatively impacted. A number of other former employees provided information on the condition of anonymity.

In conducting interviews with current FDIC employees, we followed protocols developed with guidance from Legal Division's Labor, Employment, and Administration Section regarding applicable FDIC policies, as well as obligations under the Collective Bargaining Agreement. For bargaining unit employees, we informed them whether they were being interviewed as potential subjects or witnesses, of their right to union representation at the interview should they reasonably believe the interview may result in disciplinary action against them, and that the interview would be scheduled to allow them an opportunity to seek the counsel of a union representative if they wished to do so.

THE FEDERAL DEPOSIT INSURANCE CORPORATION

I. History and Mission

Congress created the FDIC through the enactment of the Banking Act 1933 following thousands of bank failures during the Great Depression. In doing so, Congress intended to create an independent agency “to maintain stability and public confidence in the nation’s financial system.” Since its inception, the FDIC has sought to ensure the financial safety of depositors across the United States and played a critical role in maintaining the security of our nation’s financial markets. Today, the FDIC serves, among other things, as the primary federal regulator supervising state-chartered banks that do not join the Federal Reserve system.⁴³

The FDIC performs a number of important functions in service of its mission, including the following:⁴⁴

- The FDIC insures deposits in financial institutions to protect depositors’ money in the event of a bank failure. The standard insured amount has increased over time and is currently \$250,000 per depositor per insured bank. Overall, the FDIC insures trillions of dollars in deposits across the country, and since its creation, has succeeded in ensuring that “no depositor has lost a penny of FDIC-insured funds.”
- The FDIC “examines and supervises financial institutions for safety and soundness and consumer protection.” The FDIC supervises over 5,000 financial institutions to ensure that they are operating safely and in compliance with applicable laws and regulations, including those related to consumer protection.
- The FDIC steps in to resolve failing financial institutions, which are known as “resolutions.” There are several ways the FDIC can oversee resolutions, including by sales of deposits and loans from the failed institution to new ones, deposit payoffs, and insured-deposit transfers, among others. The FDIC is legally required to use the least costly option in resolutions to minimize any losses.
- The FDIC can be appointed as receiver when a bank fails. In this capacity, the FDIC manages the assets of failed financial institutions to recover the maximum amount possible and distributes them to creditors. When the process is complete, the receivership is terminated.

⁴³ THE FDIC, *About*, <https://www.fdic.gov/about/> (last visited Apr. 22, 2024); THE FDIC, *About FDIC, What We Do*, <https://www.fdic.gov/about/what-we-do/index.html> (last visited Apr. 22, 2024); THE FDIC, *U.S. Banking and Deposit Insurance History: 1930-1939*, <https://www.fdic.gov/about/history/deposit-insurance/1930-1939.html> (last visited Apr. 22, 2024).

⁴⁴ THE FDIC, *Resources*, <https://www.fdic.gov/resources/> (last visited Apr. 22, 2024); THE FDIC, *About FDIC, What We Do*, <https://www.fdic.gov/about/what-we-do/index.html> (last visited Apr. 22, 2024).

II. Operations and Organizational Structure

The FDIC is overseen by a Board of Directors consisting of five people, of which only three can be from the same political party. Currently, the five FDIC Board members are: Martin Gruenberg (Chairman), Travis Hill (Vice Chairman), Jonathan McKernan (Director), Michael Hsu (Acting Comptroller of the Currency), and Rohit Chopra (Director, Consumer Financial Protection Bureau).⁴⁵

The FDIC is divided into a number of different Divisions and Offices that each have specialized roles and functions. Although the organizational structures have changed over time, the FDIC is currently organized into the following relevant Divisions:⁴⁶

- Division of Risk Management Supervision (“RMS”): RMS, the largest Division with currently about 2,500 employees, performs financial institution risk management examinations throughout the United States as part of the FDIC’s supervisory role. One of the largest employee groups within RMS are FDIC-commissioned risk management examiners. Depending on the regions and the locations of banks that are supervised, the risk management examiners travel frequently to conduct examinations of FDIC-insured financial institutions throughout the country. Prior to 2010, RMS’s responsibilities were combined with those of the Division of Depositor and Consumer Protection in the then-existing Division of Supervision and Consumer Protection.
- Division of Depositor and Consumer Protection (“DCP”): DCP has about 860 employees. DCP’s role is to ensure that financial institutions comply with consumer protection and fair lending statutes and regulations. Like RMS, DCP also has commissioned examiners, except that those in DCP are compliance, not risk management, examiners. Prior to DCP’s creation in 2010, its responsibilities were combined with those of RMS in the then-existing Division of Supervision and Consumer Protection.

⁴⁵ THE FDIC, *About FDIC, Board of Directors & Senior Executives*, <https://www.fdic.gov/about/leadership/> (last visited Apr. 22, 2024); THE FDIC, *About FDIC, What We Do*, <https://www.fdic.gov/about/what-we-do/> (last visited Apr. 22, 2024).

⁴⁶ THE FDIC, *Contact Us, Organization Directory – Headquarters*, <https://www.fdic.gov/contact/headquarters-directory/> (last visited Apr. 22, 2024); MARKETING TO THE FDIC: UNDERSTANDING THE FDIC SERVICE CATEGORIES (undated), <https://www.fdic.gov/about/diversity/sbrp/61.pdf>; APPENDICES, FDIC 2009 ANNUAL REPORT, <https://www.fdic.gov/about/financial-reports/reports/2009annualreport/AR09appendix.pdf>; APPENDICES, FDIC 2010 ANNUAL REPORT, <https://www.fdic.gov/about/financial-reports/reports/2010annualreport/AR10appendix.pdf>; APPENDICES, FDIC 2011 ANNUAL REPORT, <https://www.fdic.gov/about/financial-reports/reports/2011annualreport/AR11appendix.pdf>; THE FDIC, *Careers, Join the FDIC as a Financial Institution Specialist*, <https://www.fdic.gov/about/careers/fis.html> (last visited Apr. 22, 2024); THE FDIC, *Careers, Division of Risk Management Supervision Average Travel Days by Location*, <https://www.fdic.gov/about/careers/fis-rms-travel-req.html> (last visited Apr. 22, 2024); THE FDIC, *2022-2026 Strategic Plan, Office of Inspector General*, <https://www.fdic.gov/about/strategic-plans/strategic/inspectorgeneral.html> (last visited Apr. 22, 2024); FDIC ANNOUNCES CHIEF LEARNING OFFICER AND CORPORATE UNIVERSITY APPOINTMENT (Aug. 17, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23062.html>; APPENDICES, FDIC ANNUAL REPORT 2023, <https://www.fdic.gov/about/financial-reports/reports/2023annualreport/ar23section7.pdf>.

- Division of Resolutions and Receiverships (“DRR”): DRR has about 390 employees. DRR manages resolutions and receiverships for failing FDIC-insured financial institutions, including the sale of assets of these institutions.
- Division of Complex Institution Supervision and Resolution (“CISR”): CISR has about 290 employees. CISR was created in 2019 to give the FDIC expanded authority in supervising systemically important banks and complex financial institutions. CISR’s predecessor was the Office of Complex Financial Institutions.
- Division of Insurance and Research (“DIR”): DIR has about 200 employees. DIR sets policy at the FDIC, including as related to deposit insurance, by analyzing risks and trends in the economic and financial sectors.
- Division of Administration (“DOA”): DOA has about 410 employees. DOA provides all administrative services to the FDIC, including human resources, training, contracting, facilities management, and security services, among others.
- Legal Division: The Legal Division has about 470 employees. The Legal Division provides legal services to the FDIC, including related to litigation, transactional, regulatory, and administrative matters.
- Division of Finance: The Division of Finance provides financial management services to the FDIC, including in the agency’s role as receiver.
- Division of Information Technology: Division of Information Technology provides information technology solutions to the FDIC, including managing hardware, software, and systems integration.
- Office of Minority and Women Inclusion (“OMWI”): OMWI is responsible for diversity, equity, and inclusion efforts and equal opportunity in management, employment, and business activities at the FDIC.
- Office of Legislative Affairs: Office of Legislative Affairs is responsible for responding to Congressional inquiries on behalf of the agency.
- Office of the Ombudsman: The Ombudsman is a confidential and independent source of information and assistance related to the FDIC’s regulatory, resolution, receivership, or asset disposition activities or for anyone that has a complaint about the FDIC.
- Corporate University: Corporate University provides learning and development for FDIC employees in supervision, compliance, resolutions, and insurance.

- Office of Inspector General (“OIG”): The FDIC’s OIG is an independent organizational unit dedicated to auditing, evaluating, investigating, and conducting other reviews of FDIC programs and operations.

The FDIC is headquartered in Washington, D.C. and Arlington, Virginia, and has regional and field offices nation-wide. There are six regions (Atlanta, Chicago, Dallas, Kansas City, New York, and San Francisco) that each have a number of field offices, with a total of over 70 such field offices. The divisions and offices of the FDIC have a presence in headquarters, and some, but not all, also have a presence in the regions. For example, both RMS and DCP have representation in each of the regions with individuals serving as “Regional Directors” or “Deputy Regional Directors” reporting to division leadership in Washington. This allows the FDIC to provide nation-wide coverage to support its personnel and activities in or near areas where supervised financial institutions are located.⁴⁷

In addition to the regional divisions and offices, the FDIC maintains a training center and residence called the Seidman Center (or the Student Residence Center) in Arlington, Virginia. The Seidman Center, built in the 1980s, is part of a multi-building complex and has classrooms used to train FDIC employees from across the country, as well as lodging quarters for students and instructors who are attending classes and amenities including a fitness center, pool, and cafeteria.⁴⁸

As of the end of 2023, the FDIC had about 5,950 employees.⁴⁹ The compensation scale for FDIC employees follows a 15 grade system, with each grade having a minimum and a maximum salary.⁵⁰ The FDIC pays higher salaries at each grade level than most other federal agencies because it is exempt from standard civil service rules in setting salaries.⁵¹ This is true of a number of federal financial regulatory agencies that, through a series of Congressional reforms beginning with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, were given the flexibility to set their own compensation and benefit systems.⁵² The FDIC is not funded by taxpayer money through Congressional appropriations. Rather, a separate Deposit Insurance Fund funds the FDIC’s operations. The funds in the Deposit Insurance Fund come from premiums paid by FDIC-insured financial

⁴⁷ MARKETING TO THE FDIC: UNDERSTANDING THE FDIC SERVICE CATEGORIES (undated), <https://www.fdic.gov/about/diversity/sbrp/61.pdf>; THE FDIC, *About FDIC, What We Do*, <https://www.fdic.gov/about/what-we-do/> (last visited Apr. 22, 2024); THE FDIC, *Contact Us, Organization Directory – Regional Offices*, <https://www.fdic.gov/contact/regional-offices/> (last visited Apr. 22, 2024); THE FDIC, *About FDIC, Visiting the FDIC*, <https://www.fdic.gov/about/visiting/> (last visited Apr. 22, 2024).

⁴⁸ THE FDIC, *About FDIC, Visiting the FDIC*, <https://www.fdic.gov/about/visiting/> (last visited Apr. 22, 2024).

⁴⁹ APPENDICES, FDIC ANNUAL REPORT 2023, <https://www.fdic.gov/about/financial-reports/reports/2023annualreport/ar23section7.pdf>.

⁵⁰ THE FDIC, *Join the FDIC Team, Compensation*, <https://www.fdic.gov/about/careers/benefits/compensation/> (last visited Apr. 22, 2024).

⁵¹ Karen Rutzick, Best in Class: Want the best pay and benefits in government? Look no further than the FDIC, GOVERNMENT EXECUTIVE, Dec. 8, 2005.

⁵² U.S. GOVERNMENT ACCOUNTABILITY OFFICE, FINANCIAL REGULATORS: AGENCIES HAVE IMPLEMENTED KEY PERFORMANCE MANAGEMENT PRACTICES, BUT OPPORTUNITIES FOR IMPROVEMENT EXIST (2007), <https://www.gao.gov/assets/a262254.html>; FEDERAL GOVERNMENT JOBS, *Federal Jobs and Compensation at Financial Regulatory Agencies*, <https://federaljobs.net/blog/federal-jobs-and-compensation-at-financial-regulatory-agencies/> (last visited Apr. 22, 2024).

institutions for deposit insurance coverage and interest earned on investments in United States government obligations (like treasury notes).⁵³

⁵³ THE FDIC, *Deposit Insurance, Understanding Deposit Insurance*, <https://www.fdic.gov/resources/deposit-insurance/understanding-deposit-insurance/> (last visited Apr. 22, 2024); THE FDIC, *About FDIC, What We Do*, <https://www.fdic.gov/about/what-we-do/index.html> (last visited Apr. 22, 2024).

POLICIES, PROCEDURES, PRACTICES, AND TRAININGS

I. Policies, Procedures and Trainings

The FDIC has a set of policies, procedures and trainings that are designed to prevent and address harassment, discrimination and other interpersonal misconduct. These policies, procedures, and trainings have been modified over the years, including being supplemented in response to the findings in the FDIC Office of Inspector General’s 2020 report entitled “Preventing and Addressing Sexual Harassment” (“OIG 2020 Sexual Harassment Report”). The information set forth in this section about the policies, procedures, and trainings reflects those as of Cleary Gottlieb’s appointment on December 11, 2023.

The FDIC’s policies, procedures, and trainings have at their foundation the FDIC’s Code of Conduct, which is the FDIC’s statement of its core values that are supposed to guide the FDIC in accomplishing its mission.⁵⁴ The FDIC’s core values are commonly referred to as the “FACE IT” values and are set forth below.⁵⁵

- Fairness: We respect individual viewpoints and treat one another and our stakeholders with impartiality, dignity, and trust.
- Accountability: We are accountable to each other and to our stakeholders to operate in a financially responsible and operationally effective manner.
- Competence: We are a highly skilled, dedicated, and diverse workforce that is empowered to achieve outstanding results.
- Effectiveness: We respond quickly and successfully to risks in insured depository institutions and the financial system.
- Integrity: We adhere to the highest ethical and professional standards.
- Teamwork: We communicate and collaborate effectively with one another and with other regulatory agencies.

The FDIC has the following eight policies that relate to harassment, different forms of discrimination, a hostile work environment, and other forms of interpersonal misconduct. These policies are overseen and implemented primarily by the Office of Minority and Women Inclusion (“OMWI”), Division of Administration’s Labor and Employee Relations Section (“LERS”), and Legal Division’s Labor, Employment, and Administration Section (“LEAS”).

1. Anti-Harassment Program Policy (“Anti-Harassment Policy”).

⁵⁴ 2023 ANNUAL PERFORMANCE PLAN 5 (2023), <https://www.fdic.gov/about/strategic-plans/performance/2023annualplan.pdf>; THE FDIC, *2022–2026 Strategic Plan, Mission, Vision, and Values*, <https://www.fdic.gov/about/strategic-plans/strategic/mission.html> (last visited Apr. 18, 2024).

⁵⁵ *One FDIC: A Program about Our Corporate Culture Training* 1 (Mar. 2024).

2. Equal Opportunity Policy.
3. Equal Employment Opportunity Commission (“EEOC”) Discrimination Complaint Process Policy.
4. FDIC Discrimination Complaint Process Policy.
5. Whistleblower Protection Policy.
6. Workplace Violence Prevention Policy.
7. Disciplinary and Adverse Actions Policy.
8. Non-Discrimination in FDIC Conducted Education and Training Programs and Outreach Activities Policy.

The FDIC requires employees to take one Anti-Harassment Training once when they join the FDIC and to take a training regarding antidiscrimination and retaliation once per year. Beyond speaking to their manager, employees can use the following three formal reporting channels to report harassment, discrimination, and other forms of interpersonal misconduct:

1. Anti-Harassment Program (OMWI, Affirmative Employment, Diversity and Inclusion Branch);
2. Equal Employment Opportunity (“EEO”) Process (OMWI, Equal Opportunity Compliance and Training Branch); or⁵⁶
3. Contacting personnel in LERS or LEAS.

There are additionally three other internal groups that employees can use as a resource to seek support for concerns related to these issues:

1. The Office of the Internal Ombudsman;
2. The National Treasury Employees Union (“NTEU”); and
3. Various Employee Resource Groups (“ERGs”).

A. Policies and Procedures

i. Anti-Harassment Policy⁵⁷

The FDIC’s Anti-Harassment Policy states that it “will not tolerate harassment by or against any applicant, employee, or contractor.” The FDIC first issued an Anti-

⁵⁶ In accordance with EEOC guidance, the FDIC’s EEO complaint process is separate and distinct from the FDIC’s Anti-Harassment Program complaint process.

⁵⁷ FDIC Directive 2710.03 (“Anti-Harassment Policy”).

Harassment Policy in 2007, and updated it in 2015 following the creation of the Anti-Harassment Program (“AHP”). The Anti-Harassment Policy defines harassment as follows:

“Harassment is any verbal or non-verbal conduct that is unwelcome to the individual and objectively offensive. For workplace harassment to be illegal, it must be either severe or pervasive, and based on a characteristic protected by a law enforced by EEOC (*e.g.*, Title VII of the Civil Rights Act). However, conduct need not rise to the level of illegal harassment to be prohibited by this Directive.”

The Anti-Harassment Policy also provides that the FDIC “will not tolerate retaliation against any applicant, employee, or contractor for opposing harassment, reporting harassment, or participating or assisting in any inquiry, investigation, lawsuit, or other proceeding concerning harassment.”⁵⁸

The Anti-Harassment Policy lists the following as examples of prohibited harassment: “offensive jokes, comments, objects, or pictures; unwelcome questions about a person’s identity (*e.g.*, disability status, gender identity, sexual orientation, national origin, religion); undue and unwelcome attention; ridicule or mockery; displaying offensive objects or pictures; insults or put-downs; unwelcome touching or contact; unwelcome sexual advances; requests for sexual favors; other verbal or physical harassment of a sexual nature; slurs, epithets, or name-calling; threats or other forms of intimidation; physical or sexual assault; engaging in bullying, intimidating, or threatening behavior.”⁵⁹ This list of prohibited harassment is in line with the conduct identified in the EEOC Proposed Enforcement Guidance on Harassment in the Workplace (“EEOC Proposed Guidance”). But, the EEOC Proposed Guidance provides illustrative examples of these behaviors that are not in the FDIC’s Anti-Harassment Policy.⁶⁰

The Anti-Harassment Policy states that if an FDIC applicant, employee, or contractor believes they have experienced harassment, they can make a complaint to the Anti-Harassment Program Coordinator (“AHPC”). The policy states that “[i]ndividuals who observe, experience, or otherwise learn about harassment covered under this Directive are expected to promptly report the conduct.” The policy includes a list of individuals and offices through which complaints for violations of the policy can be made, including: the alleged victim’s immediate supervisor; the supervisor of the person responsible for the alleged conduct; any management official with supervisory responsibility; the Anti-Harassment Program Coordinator; the LERS Assistant Director; or any LERS specialist. The policy also explains that the Anti-Harassment Program Coordinator performs intake for such complaints and then refers them to LERS, noting that investigations are typically conducted by LERS and LEAS “in consultation with the appropriate management official(s).”⁶¹

⁵⁸ *Anti-Harassment Policy* 5 (June 2021).

⁵⁹ *Anti-Harassment Policy* (June 2021).

⁶⁰ U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *PROPOSED Enforcement Guidance of Harassment in the Workplace*, <https://www.eeoc.gov/proposed-enforcement-guidance-harassment-workplace> (last visited Apr. 18, 2024).

⁶¹ *Anti-Harassment Policy* 6 (June 2021).

In 2021, in response to the OIG 2020 Sexual Harassment Report,⁶² the Anti-Harassment Policy was revised to: include “terminology related to sexual harassment in the examples provided in the definition of harassment;” include “Labor and Employee Relations Section (LERS) human resources specialists as points of contact to report harassment;” “[c]orrect contact information for the Anti-Harassment Program Coordinator;” make clear identification of “the Anti-Harassment Program Coordinator roles and responsibilities;” include “Legal Division responsibilities;” provide “for notification to the person reporting the harassment and alleged harasser that the investigation has been completed;” take “preventive/corrective action, as appropriate, no later than 60 days of receiving notice of a report of harassment;” and “[i]nitiate an investigation within ten calendar days of receiving the report of harassment[.]”⁶³

ii. *Equal Opportunity Policy*⁶⁴

Discrimination is prohibited at the FDIC. The FDIC has an Equal Opportunity Policy that seeks to “ensure that the FDIC workplace is inclusive, free from unlawful discrimination and harassment, and provides equal opportunity and access to all employment and business activities.” The FDIC’s Equal Opportunity Policy “prohibit[s] discrimination and harassment in its workplace and in all of its programs and activities based on race, color, religion, sex (including pregnancy, equal pay, gender identity, and sexual orientation), national origin, disability (physical and/or mental), age (40 years or older), genetic information (information about an individual’s genetic tests; or information about the genetic tests, or the manifestation of a disease or disorder in the individual’s family members), status as a parent, and retaliation (for participating in the EEO complaint process or opposing discriminatory practices).” To prevent discrimination, all FDIC employees are charged with a “responsibility to implement this policy by their conduct, decisions, and actions.” The Equal Opportunity Policy also requires accountability and monitoring of diversity initiatives, noting that “[e]ach division and office has a continuing responsibility to identify and implement strategies for achieving and maintaining a diverse workforce at all levels,” which should happen “in concert with” OMWI and the Division of Administration human resources branch.⁶⁵

Violations of the Equal Opportunity Policy can be reported either through the process provided by the EEOC Discrimination Complaint Process Policy, or the FDIC Discrimination Complaint Process Policy.⁶⁶ The Equal Opportunity Policy was issued and last updated in 2015.⁶⁷

⁶² FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁶³ *Anti-Harassment Policy* 1–2 (June 2021).

⁶⁴ FDIC Directive 2710.01 (“Equal Opportunity Policy”).

⁶⁵ *Equal Opportunity Policy* 1–5 (Nov. 2015).

⁶⁶ *Equal Opportunity Policy* 5 (Nov. 2015); *Equal Employment Opportunity Commission (“EEOC”) Discrimination Complaint Process Policy* (Nov. 2015); *FDIC Discrimination Complaint Process Policy* (Nov. 2015).

⁶⁷ *Equal Opportunity Policy* (Nov. 2015).

iii. *Equal Employment Opportunity Commission Discrimination Complaint Process Policy*⁶⁸

The FDIC’s EEOC Discrimination Complaint Process Policy “provides employees and applicants for employment with an overview of the administrative procedures for initiating and processing discrimination complaints against the FDIC that are within the jurisdiction of EEOC.” Discrimination claims within the jurisdiction of EEOC are those based upon “race, color, religion, sex (including pregnancy, equal pay, gender identity and sexual orientation), national origin, disability (physical and/or mental), age (40 years or older), genetic information and retaliation for participating in EEOC discrimination complaint process or opposing discriminatory practices.”⁶⁹

The EEOC Discrimination Complaint Process Policy walks through the timeline and process for filing both an informal and formal EEO complaint, which is discussed further in the “Policies, Procedures, Practices, and Trainings, EEO Complaint Process” Section of the Report. Importantly, the policy explains that individuals, including complainants and OMWI personnel involved in processing EEO complaints, are protected from retaliation for “participating in any activity protected by laws prohibiting discrimination in Federal employment or for opposing unlawful discrimination.”⁷⁰ The EEOC Discrimination Complaint Process Policy was issued in 2010 and updated in 2015.⁷¹

iv. *FDIC Discrimination Complaint Process Policy*⁷²

The FDIC Discrimination Complaint Process Policy “provides employees and applicants for employment with administrative procedures for initiating and processing discrimination complaints against the FDIC that are within the jurisdiction of the FDIC.” Claims that fall within the jurisdiction of this process “include those based on sexual orientation, gender identity (transgender), status as a parent, and retaliation for participating in the EEO complaint process or opposing discriminatory practices on these bases.”⁷³ While the FDIC Discrimination Complaint Process Policy was initially issued to cover types of discrimination that were, at the time, not part of an EEO protected class, this policy is now largely a vestigial policy that has been subsumed by EEOC Discrimination Process Policy and not often used in practice.⁷⁴

The timelines for filing complaints covered by the FDIC Discrimination Complaints Process Policy are the same as those for EEOC Discrimination Complaints Process Policy. However, because the FDIC Discrimination Complaints Process Policy is not derived from EEOC regulations, certain avenues are not available under this policy that would be available under EEOC Discrimination Complaints Process Policy, including requesting a

⁶⁸ FDIC Directive 2710.01 (“EEOC Discrimination Complaint Process Policy”).

⁶⁹ *EEOC Discrimination Complaint Process Policy* 1–2 (Nov. 2015).

⁷⁰ *EEOC Discrimination Complaint Process Policy* 9 (Nov. 2015).

⁷¹ *EEOC Discrimination Complaint Process Policy* 1 (Nov. 2015).

⁷² FDIC Directive 2710.04 (“FDIC Discrimination Complaint Process Policy”).

⁷³ *FDIC Discrimination Complaint Process Policy* 1–2 (Nov. 2015).

⁷⁴ Witness 256.

hearing before an Administrative Judge of EEOC, filing an appeal to EEOC, or filing a civil action in a U.S. District Court.⁷⁵ The FDIC Discrimination Complaints Process Policy was issued in 2010 and updated in 2015.⁷⁶

v. *Whistleblower Protection Policy*⁷⁷

The FDIC guarantees protections for whistleblowers, who have “rights and remedies under federal whistleblower protection laws.” The Whistleblower Protection Policy covers “[w]hen a Federal employee or applicant for employment discloses information which the individual reasonably believes evidences” “violation of law, rule, or regulation,” “gross mismanagement,” “gross waste of funds,” “abuse of authority,” or “[a] substantial and specific danger to public health or safety.”⁷⁸

The policy identifies several individuals responsible for carrying out different aspects of the policy. To the extent a whistleblower’s complaint contains disclosures that are otherwise prohibited by law or are required to be kept secret under an Executive Order, the LERS Assistant Director is designated the FDIC’s official to receive such disclosures. Separately, the FDIC Office of Inspector General (“OIG”) has a Whistleblower Protection Coordinator, who is tasked with educating employees about whistleblower protections and serving as a resource for employees and potential whistleblowers about the process and timeline of complaints. The Whistleblower Protection Policy provides contact information for the FDIC OIG Whistleblower Coordinator; headquarters and Regional LERS specialists, and the U.S. Office of Special Counsel website.⁷⁹

The Whistleblower Protection Policy encourages employees to create “an environment that allows protected disclosures to be made and received without retaliation or the threat of retaliation” and also gives options for three remedies if whistleblowers believe they have experienced retaliation, including a potential appeal to the Merit Systems Protection Board, a negotiated grievance (if the employee is in the bargaining unit), or a complaint with the OSC if an MSPB board appeal is unavailable.⁸⁰ The Whistleblower Protection Policy was issued in 2001 and updated in 2019.⁸¹

vi. *Workplace Violence Prevention Policy*⁸²

The Workplace Violence Prevention Policy requires the FDIC to “[p]rovide a safe workplace environment for every employee that is free from violence, threats of violence, intimidation, or other disruptive behavior.” The policy commits to removing any individuals responsible for such acts, and states that such individuals may be subject to disciplinary action,

⁷⁵ *FDIC Discrimination Complaint Process Policy* 4–5 (Nov. 2015).

⁷⁶ *FDIC Discrimination Complaint Process Policy* 1 (Nov. 2015).

⁷⁷ FDIC Directive 2400.02 (“Whistleblower Protection Policy”).

⁷⁸ *Whistleblower Protection Policy* 1–10 (July 2019).

⁷⁹ *Whistleblower Protection Policy* 5–9 (July 2019).

⁸⁰ *Whistleblower Protection Policy* 7 (July 2019).

⁸¹ *Whistleblower Protection Policy* 1 (July 2019).

⁸² FDIC Directive 1600.2 (“Workplace Violence Prevention Policy”).

criminal penalties, or both.⁸³ It establishes a Management Response Team in FDIC headquarters headed up by the Assistant Director of the Security and Emergency Preparedness Section (“SEPS”) of the Division of Administration; and a Management Response Team in each regional office headed up by Division of Administration regional managers with the support of LERS, LEAS, and SEPS. To the extent any instances of imminent danger are detected, the policy directs supervisors and managers to immediately contact law enforcement and notify Management Response Teams.⁸⁴ This policy was issued in 2017 and last updated in 2017.⁸⁵

vii. *Disciplinary and Adverse Actions Policy*⁸⁶

The Disciplinary and Adverse Actions Policy contains a process for “administering employee discipline and adverse actions.” This policy requires managers and supervisors to “regularly monitor and evaluate employees’ performance and conduct, and take corrective action if the performance or conduct falls below acceptable standards.” There are a range of possible disciplinary options, including disciplinary actions (letters of reprimands or suspensions less than 14 calendar days), adverse actions (including removal, over 14 calendar day suspensions, and grade reductions), and alternative discipline, among others. The policy provides information on various employee rights, including the requirement that they be informed of applicable appeal rights in adverse action cases. This policy also gives information on ways different actions might stay documented in their Official Personnel Folder.⁸⁷

The Disciplinary and Adverse Actions Policy was issued in 1999, and was last updated in 2021,⁸⁸ in response to the OIG 2020 Sexual Harassment Report, to reflect the current organizational structure, identify alternative disciplinary action as an option, and include the full list of Legal Division responsibilities. At that time, as discussed in greater detail below in the “Prior Programs, Reports, Surveys Relating to Workplace Culture” Section of the Report, the FDIC OIG made recommendations, most of which the FDIC implemented through its update to this policy, in order to reflect the current organizational structure, identify alternative disciplinary action as an option, and include the full list of Legal Division responsibilities.⁸⁹ However, the FDIC did not concur with two of OIG’s recommendations on proportionate and consistent disciplinary action for substantiated harassment, instead proposing alternative actions. The FDIC chose to address the issue of consistency through changes to the policy language and the adoption of a new case tracking system. It addressed proportionality by changing the language of the policy to reflect that proportionate action would be taken when

⁸³ *Workplace Violence Prevention Policy* 5 (Feb. 2017).

⁸⁴ *Workplace Violence Prevention Policy* 6–7 (Feb. 2017).

⁸⁵ *Workplace Violence Prevention Policy* 2 (Feb. 2017).

⁸⁶ FDIC Directive 2750.01 (“Disciplinary and Adverse Actions Policy”).

⁸⁷ *Disciplinary and Adverse Actions Policy* 1–11 (Mar. 2021).

⁸⁸ *Disciplinary and Adverse Actions Policy* 1–11 (Mar. 2021).

⁸⁹ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 16–17 (2020), <https://www.fdicogov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

appropriate based on the facts of a case and appropriate law. OIG closed out these recommendations in May 2021.⁹⁰

*viii. Non-Discrimination in FDIC Conducted Education and Training Programs and Outreach Activities Policy*⁹¹

The Non-Discrimination in FDIC Conducted Education and Training Programs and Outreach Activities Policy states “the policy of the FDIC to provide equal educational and training opportunities to all individuals and classes of individuals, regardless of their race, color, religion, sex, national origin, disability, age, sexual orientation, genetic information, gender identity, and status as a parent.” The policy also “prohibit[s] retaliation against any individual because he or she raised concerns, reported claims, or filed complaints alleging discrimination.” The policy also says “[n]o individual will be unlawfully excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in an FDIC conducted educational or training program or activity based on the covered bases.” Authority for this policy comes from Executive Order 13160 (2000), which “prohibits discrimination based on race, color, religion, sex, national origin, disability, age, sexual orientation, or status as a parent in federally conducted education and training programs.”⁹²

The policy goes through the processes for filing complaints, which must be made to OMWI within 180 days of the alleged discrimination (with few limited exceptions). The policy also explains the review process, the differences between informal resolution or formal investigation, and notes that complaints will be referred, if a violation is found, to the appropriate agency official for a discipline determination. The policy notes that there is only non-monetary, equitable relief available for violations.⁹³ This policy was issued in 2010 and last updated in 2015.⁹⁴

B. Trainings

i. Anti-Harassment Training

As noted above, before 2007, the FDIC did not have an Anti-Harassment Policy, and the definition of harassment was updated in 2015.⁹⁵ Prior to 2015, the No FEAR

⁹⁰ *Minutes of the Meeting of the Audit Committee of the FDIC* (July 2020); *Management Advisory for Recommendations 1, 2, 3, 4, 5, 6, and 7* (May 2021); *Management Advisory for Recommendation 12* (May 2021).

⁹¹ FDIC Directive 2710.12 (“Non-Discrimination in FDIC Conducted Education and Training Programs and Outreach Activities Policy”).

⁹² *Non-Discrimination in FDIC Conducted Education and Training Programs and Outreach Activities Policy 2* (Nov. 2015).

⁹³ *Non-Discrimination in FDIC Conducted Education and Training Programs and Outreach Activities Policy 2–7* (Nov. 2015).

⁹⁴ *Non-Discrimination in FDIC Conducted Education and Training Programs and Outreach Activities Policy 1* (Nov. 2015).

⁹⁵ *Anti-Harassment Policy* (June 2021).

Act Training and EEO and Diversity for Supervisors Training included limited content on what constituted harassment.⁹⁶

The FDIC started requiring employees to attend Anti-Harassment Training in April 2021.⁹⁷ As of 2021, the FDIC requires that all employees enroll in an online Anti-Harassment Training within 30 days of starting at the FDIC.⁹⁸ The FDIC does not require subsequent Anti-Harassment Training specific to the Anti-Harassment Policy on any periodic basis.

The Anti-Harassment Training defines harassment as “any verbal or non-verbal conduct that is unwelcome to the individual and objectively offensive.” It states that for workplace harassment to be illegal, “it must be either severe or pervasive, and based on a characteristic protected by a law enforced by the EEOC (e.g., Title VII of the Civil Rights Act).” Importantly, the training says that conduct “do[es] not need to rise to the level of illegal harassment” to be prohibited by the FDIC’s Anti-Harassment Policy.⁹⁹ In other words, the FDIC prohibits conduct that is “unwelcome to the individual” and is “objectively offensive,” even if that conduct does not rise to the higher legal threshold of the conduct being “severe or pervasive” and directed at a protected class.

The training lists types of prohibited harassment, including “offensive jokes, comments, objects, or pictures”; “unwelcome questions about a person’s identity”; “unwelcome touching or contact”; “insults or put downs”; “requests for sexual favors”; “other verbal or physical harassment of a sexual nature”; “slurs, epithets, or name-calling”; “physical or sexual assault”, and “engaging in bullying, intimidating, or threatening behavior.”¹⁰⁰ No illustrative examples of such conduct are provided, nor are there quizzes to confirm an employee’s understanding of what such conduct could look like.

The Anti-Harassment Training does not define sexual harassment, but explains it is a “specific type of harassment” based on an individual’s sex. The training subsequently explains that “occasional and innocuous compliments generally will not constitute harassment, but rather reflects the reality of human experience and common courtesy.”¹⁰¹ The training describes several channels through which FDIC employees can report harassment, namely, the alleged victim’s supervisor; the supervisor of the person allegedly responsible for the harassment; any management official with supervisory responsibility; the Anti-Harassment Program Coordinator; and/or LERS. The training also describes the procedure for reporting and investigating harassment allegations that is contained in the Anti-Harassment Policy, noting that throughout this process, “the identity of the person reporting the harassment, the alleged harasser, and other witnesses interviewed, as well as the information they provide

⁹⁶ Witness 645.

⁹⁷ *Office of Communications, 2021 Global Messages, Required: Anti-Harassment Program Briefing Course* (Apr. 2021); Witness 645; FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 29–30 (2020), <https://www.fdicioig.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁹⁸ *Mandatory Training Courses* (undated).

⁹⁹ *Anti-Harassment Training 4* (Apr. 2021).

¹⁰⁰ *Anti-Harassment Training 5* (Apr. 2021).

¹⁰¹ *Anti-Harassment Training 6–7* (Apr 2021).

during the investigation are kept confidential to the extent possible”, but information may need to be shared on a “need to know” basis. The training directs anyone who observes, experiences, or otherwise learns about harassment to promptly report the conduct.¹⁰²

ii. *Notification and Federal Employee Anti-discrimination and Retaliation Act Training*

In 2002, the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (“No FEAR Act”) was passed, seeking to increase accountability regarding illegal discrimination and retaliation in the federal workforce. The FDIC first implemented a No FEAR Act training in 2006 in compliance with this law and it was immediately made mandatory for all employees.¹⁰³ All FDIC employees are required to take this online training within 90 days of starting at the FDIC, then once every two years thereafter.¹⁰⁴

The No FEAR Act training defines sexual harassment in reference to Title VII of the Civil Rights Act of 1964 (“Title VII”) as “‘unwelcome’ sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.” The training explains that there are two types of sexual harassment pursuant to Title VII: “quid pro quo” harassment, when “submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual”; and “hostile work environment” harassment, in which “sexual conduct is sufficiently severe or pervasive that a reasonable person would consider it to be intimidating and abusive.”¹⁰⁵ The training provides a short video clip of a supervisee describing their supervisor making sexual advances toward them. While the training refers back to the FDIC’s Anti-Harassment Policy, which covers sexual harassment and other types of harassment that do not rise to the level of legal harassment, the No FEAR Act training focuses on conduct rising to the legal standard of legal harassment and offers no examples of the difference. But, the training provides interactive examples of discrimination, including those that violate multiple federal laws including Title VII and the Age Discrimination in Employment Act. There are also multiple-choice quizzes that test the employee’s knowledge of whether an example constitutes discrimination, and whether or how the conduct should be reported.

The No FEAR Act training describes reporting channels for filing discrimination or retaliation complaints, including the FDIC’s EEO complaint process, NTEU, and the Anti-Harassment Program. It also discusses the informal EEO complaint process, which is described more fully below in the “Policies, Procedures, Practices, and Trainings, OMWI” Section of the Report.¹⁰⁶ The training also covers whistleblower protections provided by federal laws such as the Whistleblower Protection Act and where whistleblower retaliation complaints can be filed—the OSC, an appeal with the MSPB, a grievance under the Collective

¹⁰² *Anti-Harassment Training* 8–10 (Apr. 2021).

¹⁰³ Administrative Personnel, Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, Training Obligations 5. CFR § 724.203 (2006).

¹⁰⁴ *Mandatory Training Courses* (undated); *No Fear Act Training* 21 (May 2022).

¹⁰⁵ *No Fear Act Training* 21 (May 2022).

¹⁰⁶ Report, “Policies, Procedures, Practices, and Trainings” Section.

Bargaining Agreement between the FDIC and NTEU (if a bargaining unit employee), or a civil action in U.S. District Court. The training states that “federal laws that prohibit discrimination also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding.”¹⁰⁷

iii. *Equal Employment Opportunity and Diversity for Supervisors Training*

The FDIC requires all managers and supervisors to participate in an online training entitled “EEO and Diversity for Supervisors” every three years.¹⁰⁸ This training was introduced in 2002 and became mandatory for supervisors upon introduction. This training educates managers and supervisors about the definition of discrimination under Title VII, the protected classes under Title VII, the EEO complaint procedure, and a supervisor’s role in the EEO complaint procedure. Importantly, it states that, “managers and supervisors can be held liable for discrimination or harassment if they knew or reasonably should have known about the behavior and did nothing about it.”¹⁰⁹ The training focuses on the legal standards for discrimination and harassment pursuant to EEOC. Specifically, harassment is defined by reference to the legal standard, not that of the Anti-Harassment Policy, which states that “employees need not assert that the harassment rises to a level prohibited by Title VII of the Civil Rights Act or other civil rights statutes, or that the harassment is based on membership in a protected class.”¹¹⁰ The training describes harassment with reference to the severe or pervasive standard under the law: “if conduct is severely offensive, it creates a hostile work environment, which means that harassment occurred. But if conduct was not severely offensive, but was repeated over and over; then that can all add up to creating a hostile work environment. That is what we call pervasive.”¹¹¹ The training does not address conduct that would violate the FDIC’s Anti-Harassment Policy but not the legal standard.

iv. *Workplace Diversity, Equity, and Inclusion in Action Training*

The FDIC has a mandatory online training for all employees called Workplace Diversity, Equity, and Inclusion (“DE&I”) in action training, which focuses on eliminating bias and discrimination in the workplace.¹¹² Employees are required to enroll in this one-time online training within 90 days of starting at the FDIC. The purpose of this training is to help “learners to recognize key characteristics of DEI and practices for building and sustaining a healthy DEI culture.”¹¹³ In this training, diversity is defined as “the psychological, physical, and social differences that occur among people.” The training also notes that in order “to have

¹⁰⁷ *No Fear Act Training* 17–34 (May 2022).

¹⁰⁸ *Mandatory Training Courses* (undated); *EEO and Diversity for Supervisors Training* (undated).

¹⁰⁹ *EEO and Diversity for Supervisors Training* 58 (undated).

¹¹⁰ *Anti-Harassment Policy* 4 (June 2021).

¹¹¹ *EEO and Diversity for Supervisors Training* 15 (undated).

¹¹² *Mandatory Training Courses* (undated); *Workplace Diversity, Equity, and Inclusion in Action* (Nov. 2023).

¹¹³ *Mandatory Training Courses* (undated).

real equity, you have to ensure that barriers that previously prevented the full participation of all groups have been eliminated.”¹¹⁴

The training represents that “inclusion means creating an atmosphere where all individuals and groups are welcomed, respected, supported and valued.” To help build a lasting DE&I culture, the training encourages employees to “first, embrace the unique strengths, talents and contributions of others”; “be curious and inquisitive about the whole person”; “create an environment where people feel safe to push back on outdated practices and question the status quo”; “reduce the pressure to assimilate to one dominant corporate culture so that the focus is not on fitting in, but on individuals adding value in their own unique ways.” This training includes video interview and discussion components, as well as questions which range in format from matching to multiple choice.¹¹⁵

v. *Whistleblower Protection Training*

FDIC employees are required to enroll in an annual training entitled Responding to Employee Allegations of Whistleblower Protection Violations, and for supervisors and managers, a triennial Whistleblower Certification Training for Supervisors.¹¹⁶ Both whistleblower trainings are created and provided by the OSC.¹¹⁷

Both trainings note that federal law “prohibit[s] taking, failing to take, or threatening to take or fail to take any personnel action for”: “protected whistleblower disclosures” and “protected activity.”¹¹⁸ Protected disclosures include disclosures regarding a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; substantial and specific danger to public health or safety; and censorship related to scientific research or analysis. Protected activity includes exercising an appeal, complaint, or grievance right; providing testimony or other assistance to a person exercising those rights; cooperating with the OSC, OIG, or other internal investigation; and refusal to obey an order that would require a violation of law, rule, or regulation.¹¹⁹

The training specific to managers and supervisors provides advice on protecting whistleblowers, including by being “measured in your speech and actions”; “foster[ing] an open work environment in which employees are not reluctant to disclose wrongdoing”; “set the right tone at the top;” and “seek expert advice when you are unsure.”¹²⁰ The more general training required of all employees also includes recommendations for supervisors, such as “stay open and receptive to employee’s disclosures of wrongdoing even if the disclosures do not appear to meet the legal definition of whistleblowing” and “even if you disagree with the

¹¹⁴ *Workplace Diversity, Equity, and Inclusion in Action* 4 (Nov. 2023).

¹¹⁵ *Workplace Diversity, Equity, and Inclusion in Action* 4–5 (Nov. 2023).

¹¹⁶ *Mandatory Training Courses* (undated); *Responding to Employee Allegations of Whistleblower Protection Violations Training* (undated); *Whistleblower Certification Training for Supervisors* (undated).

¹¹⁷ *Responding to Employee Allegations of Whistleblower Protection Violations Training* (undated); *Whistleblower Certification Training for Supervisors* (undated).

¹¹⁸ *Whistleblower Certification Training for Supervisors* 9 (undated).

¹¹⁹ *Whistleblower Certification Training for Supervisors* 5–12 (undated); *Responding to Employee Allegations of Whistleblower Protection Violations Training* 6–11 (undated).

¹²⁰ *Whistleblower Certification Training for Supervisors* 17 (undated).

content of the disclosure or the facts of the alleged retaliation, ensure that you do not allow your disagreement to affect your personnel decisions.”¹²¹

vi. *Workplace Security Training*

FDIC employees are also required to enroll in a mandatory online training regarding the Workplace Violence Prevention Policy as well as other policies related to the physical security of FDIC premises. The training is required within 30 days of starting at the FDIC, then annually thereafter.¹²² This training focuses on physical security threats, including intrusions on FDIC property, and briefly addresses workplace violence as an example of physical security threats. The training states that “the FDIC does not tolerate violent behaviors and takes reports of such behaviors seriously.”¹²³

vii. *Management and Leadership Trainings*

Supplementing the above mandatory trainings, prior to 2015 and through the time of our review, the FACE IT values have been included in the FDIC’s mandatory annual ethics training for all employees, as well as the mandatory training for new FDIC employees.¹²⁴ In addition to the trainings geared towards all FDIC employees, the FDIC has several mandatory trainings on management and leadership depending on the grade-level of the employee, as well as some elective training options. For example, Introduction to FDIC Leadership and One FDIC are trainings provided to entry-level examiners-in-training, known as Financial Institution Specialists. These courses serve to introduce new Financial Institution Specialists to principles of effective leadership and followership, as well as the FDIC’s values, and serve as a foundation for future leadership trainings.¹²⁵

In addition, all senior executives who are grade Executive Manager are required to enroll in the Executive Transition Experience training on a one-time basis upon being promoted into grade Executive Manager. This training was introduced in March 2017 and was required only for those employees transitioning to roles as executives. This is a half day course which involves conversations on topics like FDIC divisions and strategy.¹²⁶

Upon becoming an Executive Manager, senior executives are required by federal law to attend training within a year of their promotion, then every three years. These trainings are meant to “provide each supervisor and manager additional training on the use of appropriate actions, options, and strategies to”: “(1) mentor employees”; “(2) improve employee performance and productivity”; “(3) conduct employee performance appraisals in accordance with agency appraisal systems”; and “(4) “identify and assist employees with

¹²¹ *Responding to Employee Allegations of Whistleblower Protection Violations Training* 8–9 (undated).

¹²² *Mandatory Training Courses* (undated); *Workplace Security Training* (undated).

¹²³ *Workplace Security Training* 30 (undated).

¹²⁴ THE FDIC, *About FDIC, Statement of the FDIC Board of Directors on the FDIC’s Code of Conduct*, <https://www.fdic.gov/about/governance/code-of-conduct/> (last visited Apr. 19, 2024); *2023 Annual Ethics Training* 5 (undated); *Introduction to FDIC Leadership* 57–58 (undated); *One FDIC: A Program About Our Corporate Culture* 1 (Mar. 2024).

¹²⁵ *Active Leadership and Management Skills Courses* 12 (undated).

¹²⁶ Witness 645.

unacceptable performance.” Prior to the COVID-19 pandemic, the FDIC required senior executives to attend such trainings annually. However, due to resource constraints, that requirement has been reverted to the statutory requirement of triennial trainings.¹²⁷

Below the Executive Manager level, all first-time supervisors at grade CM-2 or below are required to enroll in a 31-week mandatory course that focuses on enabling supervisors to develop the best practices for being “results-oriented leaders”, and “developing the necessary skills to effectively lead people, proactively manage change, promote a high-performance workplace, and motivate and develop employees through effective coaching conversations.”¹²⁸

Outside of leadership trainings, in the spring of 2023, OMWI initiated a mandatory empathy training, the FDIC Course on Empathy in the Workplace.¹²⁹ The training defines empathy and its difference from sympathy; explains the importance of empathy in the workplace; identifies the relationship between empathy and DE&I; and shares guidance on how to better show empathy in the workplace. This training includes intermittent check-the-box questions to test understanding.¹³⁰

In addition to these mandatory trainings, there are dozens of elective leadership trainings that employees can enroll in, including trainings such as “Essentials of Team Leadership”, “The EQ Edge: Using Our Emotional Smarts for Leadership Success”, and “Servant Leadership: Leading at a Higher Level.”¹³¹ “Servant Leadership: Leading at a Higher Level” discusses the concept of servant leadership, or employee-centered leadership, where “the leader is servant first and focuses on the needs of others before their own.” This training takes employees through the servant leadership theory, identifying characteristics of servant leaders, and suggestions on how to implement this leadership style.¹³² Almost all of these trainings are listed as targeted toward non-supervisory employees.

There is also an option for bespoke training, where managers in offices or divisions reach out to Corporate University in order to request trainings on topics such as respect and trust in the workplace. These trainings would be delivered by Corporate University to smaller groups, such as the requesting manager and their direct reports.¹³³

II. Reporting and Handling of Allegations of Misconduct

A. Office of Minority and Women Inclusion

The Office of Minority and Women Inclusion (“OMWI”) oversees the Anti-Harassment Program, the EEO Discrimination Complaint Process, and the FDIC

¹²⁷ Administrative Personnel, Succession Planning, Systematic training and development of supervisors, managers, and executives 5 CFR § 412.202(b) (2009); Witness 645.

¹²⁸ *Active Leadership and Management Skills Courses* 12 (undated).

¹²⁹ Witness 256.

¹³⁰ *FDIC Course on Empathy in the Workplace* (undated).

¹³¹ *Active Leadership and Management Skills Courses* 12 (undated).

¹³² *Servant Leadership: Leading at a Higher Level* 25 (undated).

¹³³ Witness 645.

Discrimination Complaint Process. OMWI was established in January 2011 pursuant to the Dodd-Frank Act, and is responsible for diversity in management, employment, and business activities.¹³⁴ OMWI is comprised of the National Financial Institution Diversity Strategy Branch; the Affirmative Employment, Diversity and Inclusion Branch; the Equal Opportunity Compliance and Training Branch; and the Diversity and Business Inclusion branch.¹³⁵ The Anti-Harassment Program is overseen by the Affirmative Employment, Diversity and Inclusion Branch, while the EEO Discrimination Complaint Process is overseen by the Equal Opportunity Compliance and Training Branch.¹³⁶

i. The Anti-Harassment Program

The Anti-Harassment Program, which is established under OMWI, provides employees with an internal process to report harassment that violates the Anti-Harassment Policy. The current Anti-Harassment Policy came into effect at the FDIC in 2015.¹³⁷

The Chair of the Affirmative Employment, Diversity and Inclusion Branch also serves as the Anti-Harassment Program Coordinator who oversees the Anti-Harassment Program.¹³⁸ The Anti-Harassment Program Coordinator receives complaints under the Anti-Harassment Policy via emails to the Anti-Harassment Program's mailbox,¹³⁹ or by email, mail, or phone to the coordinator directly.¹⁴⁰ The coordinator performs an intake with the complainant to gather preliminary information about the allegations. After the intake is completed, all harassment complaints are required to be referred by the coordinator to LERS.¹⁴¹ The coordinator will not refer complaints to EEO, since employees must file their own complaint, but they can tell employees to go to EEO.¹⁴² Generally, the coordinator emails the Assistant Director of LERS, who then assigns the complaint to the appropriate LERS specialist based on the division and location of the complainant.¹⁴³ LERS and LEAS review the allegations to determine whether they are covered by the Anti-Harassment Policy and consult with management to determine whether immediate corrective action, such as separation of the complainant and alleged respondent, is necessary. Employees can raise allegations of harassment "in connection with an EEO complaint, a negotiated or administrated grievance, a complaint filed with the U.S. Office of Special Counsel, or an appeal filed with the Merits Systems Protection Board." If an employee makes such a claim, the employee will be "deemed" to have reported such harassment under the Anti-Harassment Policy. Employees can report harassment to the Anti-Harassment Program Coordinator and simultaneously pursue

¹³⁴ THE FDIC, *About FDIC, Diversity and Inclusion*, <https://www.fdic.gov/about/diversity/> (last visited Apr. 17, 2024).

¹³⁵ The FDIC, *Contact Us, Organization Directory – Headquarters*, <https://www.fdic.gov/contact/headquarters-directory/> (last visited Apr. 18, 2024).

¹³⁶ Witness 256.

¹³⁷ *Anti-Harassment Policy* (June 2021).

¹³⁸ Witness 256.

¹³⁹ *Anti-Harassment Policy* (June 2021).

¹⁴⁰ Witness 660; Witness 519.

¹⁴¹ *Anti-Harassment Policy* (June 2021).

¹⁴² Witness 256.

¹⁴³ Witness 251.

“statutory, administrative, or collective bargaining remedies regarding an alleged act of harassment (e.g., EEO complaint).” But, making a report under the Anti-Harassment Policy does “not satisfy the requirements or delay the time limits or deadlines applicable for initiating or pursuing redress through other processes.”¹⁴⁴

If the allegations are covered by the Anti-Harassment Policy, LERS and LEAS will determine if an investigation is appropriate. If they decide it is appropriate, the investigation must begin within 10 calendar days of LERS and LEAS receiving the report of harassment. The complainant and the alleged harasser must be notified within five business days of the conclusion of the investigation that it has been completed. The finder of facts—generally a LERS specialist, but sometimes another appropriate official “assigned to conduct a prompt, independent, thorough, and impartial investigation”—will provide investigative findings to the appropriate management official, generally the alleged harasser’s immediate supervisor. FDIC management, in consultation with LERS and LEAS, determines what, if any, action to take as a result of the findings. If harassment has occurred, the Anti-Harassment Policy says that the FDIC will take “immediate, appropriate action within 60 calendar days of receiving notice of a report of harassment.”¹⁴⁵

ii. Equal Employment Opportunity Complaint Process

Employees have the right to file an EEO claim for allegations of discrimination based on a protected class—namely, race, color, religion, sex, national origin, disability, age, genetic information, and retaliation for participating in the EEOC discrimination complaint process. Employees can choose between filing an informal or formal EEO claim. For all types of EEO claims, an employee has 45 calendar days from the time of the incident to contact an EEO Counselor.¹⁴⁶ It is the affirmative obligation of an employee to contact an EEO Counselor to pursue a claim under the Equal Opportunity Policy, and employees can make these claims by calling OMWI’s Complaint Processing Branch or an EEO Counselor directly.¹⁴⁷ An EEO Counselor must refer harassment complaints to the AHP regardless of employee consent.¹⁴⁸

For informal EEO complaints, an employee meets with an EEO Counselor who gathers the basic facts. The employee can then either opt for counseling or mediation with the accused party. If the employee opts for EEO counseling, it must be completed within 30 calendar days after the employee contacted the EEO office. If an employee opts for mediation, it must be completed within 90 calendar days after initial contact.¹⁴⁹ Counseling involves an individual trained in EEO counseling to attempt informal resolution of the matter with the

¹⁴⁴ *Anti-Harassment Policy* 7, 8 (June 2021).

¹⁴⁵ *Anti-Harassment Policy* 7, 8, 14 (June 2021).

¹⁴⁶ *Equal Employment Opportunity Commission (“EEOC”) Discrimination Complaint Process Policy* 1–2, 4 (Nov. 2015); Federal Sector Equal Employment Opportunity, 29 C.F.R. Part 1614 (2023).

¹⁴⁷ *EEOC Discrimination Complaint Process Policy* (Nov. 2015).

¹⁴⁸ Witness 256.

¹⁴⁹ U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Contacting an EEO Counselor*, <https://www.eeoc.gov/federal-sector/contacting-eeo-counselor> (last visited Apr. 18, 2024).

aggrieved employee.¹⁵⁰ Mediation involves a neutral person helping individuals involved in the complaint process reach a mutually agreeable resolution. If a claim is not resolved, then a notice of right to file a formal complaint is issued to the employee, who thereafter has fifteen calendar days to file a formal EEO claim.¹⁵¹

Should an employee pursue a formal complaint after informal counseling or mediation, an EEO Counselor will prepare a report that includes: a precise description of the claim(s) and basis(es) of the complaint; relevant documents; timeline of informal counseling; whether the counseling process was initiated in a timely manner; and an indication as to whether an attempt was made to resolve the complaint.¹⁵² For formal EEO claims, an EEO Counselor will initially review the claim to determine if it meets certain procedural requirements. A complaint, or individual claims in a complaint, may be dismissed for a variety of reasons, such as: failing to state a claim; stating a claim that is already pending before, or has been decided by, the agency or the Commission; failing to comply with the applicable time limits; stating a claim that is already raised in a negotiated grievance procedure or in an appeal to MSPB; alleging dissatisfaction with the processing of a previously filed complaint; or demonstrating a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. Where a claim is partially dismissed, “OMWI will notify the complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file.”¹⁵³

If dismissed entirely, a Final Agency Decision is issued with a right to appeal “to the EEOC within 30 calendar days of receipt of the final agency action” or, for a mixed-case complaint, appeal to MSPB. If partially accepted, then an appeal cannot occur on the dismissed claims until the outstanding claims are resolved before an EEOC Administrative Judge, or until a Final Agency Decision is issued. If the claim is accepted, an investigation is conducted by an EEO Investigator, who should be “a trained individual authorized by the FDIC to conduct an impartial and thorough investigation into the claims raised in an EEO complaint that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred.”¹⁵⁴ Investigations must be completed within 180 calendar days from the filing date of the formal complaint and are handled by a third party firm.¹⁵⁵

A report of investigation is subsequently issued to the complainant, after which an employee has 30 calendar days to elect for an EEOC hearing before an EEOC Administrative Judge or they will receive a Final Agency Decision (issued with appeal rights). The report of investigation is the “completed compilation of statements from witnesses and

¹⁵⁰ *EEOC Discrimination Complaint Process Policy* 3 (Nov. 2015).

¹⁵¹ *EEOC Discrimination Complaint Process Policy* 5 (Nov. 2015); Federal Sector Equal Employment Opportunity, 29 C.F.R. Part 1614 (2023).

¹⁵² U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Equal Employment Opportunity Pre-Complaint Processing*, <https://www.eeoc.gov/federal-sector/management-directive/chapter-2> (last visited Apr. 18, 2024).

¹⁵³ *EEOC Discrimination Complaint Process Policy* 6, 7 (Nov. 2015).

¹⁵⁴ *EEOC Discrimination Complaint Process Policy* 7, 8 (Nov. 2015).

¹⁵⁵ Witness 321; Witness 519.

relevant documents collected during the investigation of the accepted claims of a discrimination complaint.”¹⁵⁶

The FDIC also has an EEO Conflict of Interest Discrimination Complaint Processing Procedures protocol. It states that “when complaints allege discrimination against the FDIC Chairman, the Director of OMWI, or any OMWI supervisor” there could be a potential conflict of interest given OMWI’s role in processing EEO discrimination complaints filed against the FDIC. In such cases, complaints are processed in full—from informal counseling to final agency action—by partnering federal agencies whenever possible, or otherwise by the FDIC’s Legal Division.¹⁵⁷

B. Labor and Employee Relations Section and Labor, Employment, and Administration Section

The Labor and Employee Relations Section (“LERS”) and the Labor, Employment, and Administration Section (“LEAS”) both have roles in receiving and handling reports of harassment. For background, LERS (within Division of Administration) and LEAS (within the Legal Division) have roles and functions far broader than receiving and handling such reports of misconduct. Among other roles, both guide labor and employee relations practices and make decisions to protect the legal, financial and reputational interests of the FDIC, as well as handling other human resources and legal functions, respectively.¹⁵⁸

There are approximately 20 LERS specialists at the FDIC, with about half in headquarters and at least one in every regional office.¹⁵⁹ Until around 2022, regional LERS specialists did not report to headquarters, but rather leadership in the relevant regional office.¹⁶⁰ LERS serves as a resource for supervisors on employee performance-related and conduct issues.¹⁶¹ LERS is also the primary point of contact with NTEU, including in relation to grievances prior to the invocation of arbitration, notification, informal communications, and labor negotiations (other than those specified as handled by LEAS).¹⁶²

There are approximately 20 attorneys and 20 other employees within LEAS, as well as a number of different units. Approximately 15 of these attorneys supervise investigations into performance or conduct-related issues and advise management on discipline, with approximately half in headquarters and at least one covering every regional office.¹⁶³ LEAS is involved in advising management on all substantive labor negotiations with NTEU, although LERS is the primary point of contact. LEAS serves as the lead negotiators on union negotiations with FDIC-wide impact. Both LEAS and LERS can do initial drafts or

¹⁵⁶ *EEOC Discrimination Complaint Process Policy 4* (Nov. 2015).

¹⁵⁷ *Equal Employment Opportunity Conflict of Interest Discrimination Complaint Processing Procedures 1* (Sept. 2021).

¹⁵⁸ LERS AND LEAS, *Memorandum of Understanding 1* (May 2020).

¹⁵⁹ Witness 379; LERS, *Organizational Chart* (Jan. 2024).

¹⁶⁰ Witness 379.

¹⁶¹ *Standard Operating Procedures (“SOP”) Disciplinary and Adverse Actions 1* (Jan. 2021).

¹⁶² LERS AND LEAS, *Memorandum of Understanding 2* (May 2020).

¹⁶³ LERS, *Organizational Chart* (Jan. 2024).

revisions of employment or labor-related directives, and work together on subsequent drafts. More broadly, DOA also provides a number of administrative services, and the Legal Division represents the FDIC in litigation and provides advice on strategic and legal issues.¹⁶⁴

LERS becomes involved in allegations of harassment, including sexual harassment, that fall outside of the Equal Opportunity Policy, through reports from Anti-Harassment Program Coordinator, the Internal Ombudsman (with explicit permission from the complainant), the Legal Division, OMWI, management, and employees directly.¹⁶⁵ There is a standard operating procedure that governs how management-initiated investigations into allegations of misconduct, including but not limited to allegations of harassment, are handled by LERS and LEAS that went into effect on December 28, 2020 (the “Investigations SOP”). The Investigations SOP states that an investigation may be initiated with a written or oral request from management to LEAS and LERS.¹⁶⁶ Under the Investigations SOP, if a decision is made to conduct an investigation, the appropriate management official for the investigation, in collaboration with LERS and LEAS, identifies the appropriate person to conduct the investigation, which is often the LERS specialist assigned to that particular division or regional office. LERS has primary responsibility for conducting investigations into misconduct, unless the investigation would fall under the mandate of the Security and Emergency Preparedness Section (“SEPS”) or the OIG. SEPS retains independent authority to conduct background investigations, security clearance investigations and periodic reinvestigations, as well as respond to emergency situations. In addition, allegations against OIG employees are referred to OIG. LEAS may at times assume primary responsibility for conducting an internal investigation at the request or direction of management, but the Investigations SOP does not state in what circumstances that may be appropriate. All witness interviews and other fact-finding are conducted by whomever leads the investigation, be it the LERS specialist or otherwise.¹⁶⁷

The division of responsibility between LEAS and LERS with respect to investigations into employee misconduct is governed by a Memorandum of Understanding (“MOU”) that was entered into by DOA and the Legal Division in 2020. This MOU “sets forth the responsibilities, roles, and SOPs between LEAS and LERS.”¹⁶⁸ The stated purpose of the MOU was to provide a “good starting point to align the efforts of the two offices, particularly with regard to areas of overlapping responsibilities, *e.g.*, employee relations, labor relations, and investigations.”¹⁶⁹

Under the MOU and Investigations SOP, LEAS, when not leading an investigation, works with LERS to advise management officials regarding the scope of

¹⁶⁴ LERS AND LEAS, *Memorandum of Understanding* 1, 2 (May 2020).

¹⁶⁵ Some supervisors seem to have anonymous mailboxes set up to receive complaints, which they then refer to LERS. Most commonly, LERS specialists told us that they received allegations through the complainant’s supervisor. Witness 441; Witness 475; Witness 455; Witness 251; Witness 529; Witness 673; Witness 360; Witness 281; Witness 575; Witness 348.

¹⁶⁶ *Standard Operating Procedure (“SOP”) Conducting Management-Initiated Investigations* 5 (Dec. 2020).

¹⁶⁷ *SOP Conducting Management-Initiated Investigations* 4, 2, 1–2 (Dec. 2020).

¹⁶⁸ LERS AND LEAS, *Memorandum of Understanding* 1 (May 2020); Witness 379.

¹⁶⁹ LERS AND LEAS, *Memorandum of Understanding* 1 (May 2020).

investigations, witness lists, and methods of information collection. Generally, LEAS supervises all employee misconduct investigations, regardless of the source of the allegation or formality of the investigation (*e.g.*, inquiry, formal investigation, “pulse check”). However, when not leading an investigation, LEAS will not directly question witnesses without the permission of a LEAS Senior Counsel or the LEAS Assistant General Counsel, and may not participate in every witness interview.¹⁷⁰ The Investigations SOP requires LERS and LEAS to keep information regarding the investigation confidential, including to avoid unintentional waiver of potential legal privileges. When interviews are conducted by LEAS, the interviewee must be placed on notice at the outset that the interview is privileged and confidential, and that the interviewee should treat the interview as confidential and its contents should not be shared with anyone.¹⁷¹ The Investigations SOP does not otherwise state what measures should be taken or not taken to preserve confidentiality, outside of the protections afforded to alleged wrongdoers (described in further detail below).

The Investigations SOP requires that investigations begin within five business days of receipt of the request for investigation from management. For investigations concerning allegations of harassment, investigations should begin as soon as practicable. While each LERS specialist has flexibility in how to conduct witness interviews, the Investigations SOP contains suggested techniques that vary for “simple/expedited investigations,” “intermediate investigations,” and “complex investigations.”

Simple/expedited investigations “generally involve true/false questions and relatively less serious issue(s).” The Investigations SOP lists certain methods for capturing witness statements in these investigations:

- a. Phone calls to witness/witnesses followed by written summary of call;
- b. Summary/Notes from witness interview (verified or unverified by the witness depending on the needs of the investigation);
- c. Emailed statements from witnesses following telephone interviews; and
- d. Audio recording with disclosure and consent of the witness (advising attorney must be consulted for this method).¹⁷²

Intermediate investigations involve issues that require “narrative answers” such that an expedited investigation is not appropriate. The methods listed for capturing witness statements in these investigations are:

- a. Summary/Notes from witness interview (verified or unverified by the witness depending on the needs of the investigation);
- b. Signed statement by witness;
- c. Signed declaration by witness pursuant to 28 U.S.C. § 1746;
- d. Audio recording (advising attorney must be consulted for this method); and

¹⁷⁰ *SOP Conducting Management-Initiated Investigations* 4 (Dec. 2020); LERS AND LEAS, *Memorandum of Understanding* 1 (May 2020).

¹⁷¹ *SOP Conducting Management-Initiated Investigations* 5–6, 8–9 (Dec. 2020).

¹⁷² *SOP Conducting Management-Initiated Investigations* 4, 5, 7 (Dec. 2020).

- e. Court reporter.¹⁷³

Complex investigations include “‘office climate’ investigations; serious misconduct for which demotion/removal contemplated; managerial incompetence; dysfunctional work unit; multi-incident/multi-victim harassment.” Methods for capturing witness statements in these investigations include:

- a. Signed statement by witness;
- b. Signed declaration by witness pursuant to 28 U.S.C. § 1746;
- c. Audio (with or without video) recording. Advising attorney must be consulted for this method;
- d. Summary of witness statements permissible when the information is not in dispute and not likely to materially impact the outcome; and
- e. Court reporter.¹⁷⁴

The Investigations SOP also contains guidance on how the investigator should conduct interviews. For example, it states that questions should not be shared with potential witnesses in advance of interviews, to ask follow-up questions as necessary, and to minimize follow-up interviews in favor of phone calls or emails. It further states that the “alleged wrongdoer’s side of the story should be effectively captured” and the “alleged wrongdoer should be interviewed at the point(s) that best serve the needs of the investigation.” A complete investigative report (described in further detail below) needs to include the alleged wrongdoer’s response to every allegation that will be included in the final report, which “may require familiarizing the alleged wrongdoer with essential details of the allegations.”¹⁷⁵

The Investigations SOP also contains criteria the investigator should use to address material credibility issues by a witness, which are set forth in *Hillen v. Department of the Army*, 35 M.S.P.R. 453 (1987). These criteria include:

- a. the witness’s opportunity and capacity to observe the event or act in question;
- b. the witness’s character;
- c. any prior inconsistent statement by the witness;
- d. a witness’s bias, or lack of bias;
- e. the contradiction of the witness’s version of events by other evidence or its consistency with other evidence;
- f. the inherent improbability of the witness’s version of events; and
- g. the witness’s demeanor.¹⁷⁶

The investigator “may identify necessary credibility observations based upon objective and observable indicia that should be detailed in the report.” However, the investigator “should avoid making a conclusory credibility finding, but instead should report

¹⁷³ *SOP Conducting Management-Initiated Investigations* 7 (Dec. 2020).

¹⁷⁴ *SOP Conducting Management-Initiated Investigations* 7 (Dec. 2020).

¹⁷⁵ *SOP Conducting Management-Initiated Investigations* 8 (Dec. 2020).

¹⁷⁶ *SOP Conducting Management-Initiated Investigations* 10–11 (Dec. 2020).

objective and observable facts that will assist management in fulfilling their responsibilities.”¹⁷⁷

Employees who are part of the bargaining unit for the FDIC and are subject to an investigatory interview that could lead to disciplinary action have the right to have their union representative present at interviews, as a result of what are often referred to as “Weingarten rights.”¹⁷⁸ In such circumstances, the investigator must inform the employee in advance of the interview that they are the subject of an investigation into potential misconduct, and that they have a right for a union representative to be present at the interview. The employee then can decide whether they would like a union representative to be present.¹⁷⁹ The FDIC is required to inform union representatives about the subject matter of the interview and allow time for the representative to meet with the employee prior to the interview. At the interview, union representatives can ask for the investigator to clarify questions, provide advice to the employee on how to answer, and provide additional information to the investigator following the interview. The representative may also object to certain questions if they are intimidating or offensive.¹⁸⁰

The Investigations SOP requires that once an investigation is complete a report on the investigation be prepared. The report on the investigation should contain a description of how the investigation was initiated, a statement of issue(s) investigated, a list of witnesses interviewed and a statement of facts. Unless otherwise directed, the Investigations SOP directs the investigator not to include any conclusion regarding the presence of misconduct, or any written recommendations in the report on the investigation. Once finalized, this report is reviewed by LEAS and then provided to management for review. After any optional in-person briefing between management, the investigator, and LEAS is completed, the Investigations SOP provides that an investigator, after discussing with LEAS whether to do so, may notify complaining witnesses, responding witnesses or subjects of the investigation, that the investigation is complete.¹⁸¹ This appears to conflict with the Anti-Harassment Policy, which provides that the investigator is required to notify the person reporting the harassment and the alleged harasser that the investigation has been completed within 5 business days of its completion.¹⁸²

Determinations of disciplinary action at the FDIC are governed by the Disciplinary and Adverse Actions Policy (described above), the Disciplinary and Adverse Actions Standard Operating Procedure (“Disciplinary and Adverse Actions SOP”), the terms of Collective Bargaining Agreement between the FDIC and NTEU,¹⁸³ and 5 C.F.R. § 752.202

¹⁷⁷ *SOP Conducting Management-Initiated Investigations* 11 (Dec. 2020).

¹⁷⁸ NATIONAL LABOR RELATIONS BOARD, *Weingarten Rights*, <https://www.nlr.gov/about-nlr/rights-we-protect/your-rights/weingarten-rights> (last visited Apr. 18, 2024).

¹⁷⁹ *Nationwide Agreement between the Federal Deposit Insurance Corporation & National Treasury Employees Union* 187 (Sept. 2017); Witness 251.

¹⁸⁰ NATIONAL LABOR RELATIONS BOARD, *Weingarten Rights*, <https://www.nlr.gov/about-nlr/rights-we-protect/your-rights/weingarten-rights> (last visited Apr. 18, 2024).

¹⁸¹ *SOP Conducting Management-Initiated Investigations* 10, 11, 12 (Dec. 2020).

¹⁸² *Anti-Harassment Policy* 8 (June 2021).

¹⁸³ LERS AND LEAS, *SOP Disciplinary and Adverse Actions* 1 (Jan. 2021).

and 5 C.F.R. § 752.403, which are more commonly referred to as the standards for adverse action.¹⁸⁴

If management and the lead investigator determine that disciplinary or adverse actions are needed based on the report on the investigation, the lead investigator will prepare an initial draft of the proposed or final disciplinary or adverse actions and supporting documentation. They must work with LEAS to ensure that any contemplated action is proportionate with the misconduct the employee has committed. Once the disciplinary or adverse action is drafted, the lead investigator provides the draft action and supporting documentation for LEAS to review. After LEAS and LERS agree on the final draft, it is provided to the appropriate management official for issuance.¹⁸⁵

There are several types of disciplinary or adverse actions available. At the lowest level, an employee may be issued a letter of counseling or warning, which is not considered a “disciplinary action.” For bargaining unit employees, counseling or warning letters may not be used as evidence for progressive discipline, and are normally removed from an employee’s file no later than one year after the date of issuance absent a legitimate administrative need (e.g., pending litigation).¹⁸⁶ Disciplinary actions include written letters of reprimand, written letters of admonishment, and suspensions of 14 calendar days or less.¹⁸⁷ Letters of reprimand are placed in an employee’s file for 2 years after the date of issuance, and letters of admonishment are placed in an employee’s file for 1 year after the date of issuance.¹⁸⁸ For bargaining unit employees, after the letter of reprimand or letter of admonishment is removed from an employee’s file, it may not be relied upon for progressive discipline unless, prior to its removal, the FDIC relied on it to support a subsequent action.¹⁸⁹ Finally, adverse actions are defined as removals, reductions in grade, reductions in pay, suspensions longer than 14 days, an indefinite suspension, or a furlough of thirty calendar days or less of any employee.¹⁹⁰ In most cases, Merit Systems Protection Board appeal rights only apply to adverse actions.¹⁹¹ A suspension of any length, as well as adverse actions, are placed in an employee’s file permanently.¹⁹²

¹⁸⁴ Standard for action, 5 C.F.R. § 752.202; Adverse Actions, 5 C.F.R. § 752.403; LERS AND LEAS, *SOP Disciplinary and Adverse Actions* 1 (Jan. 2021).

¹⁸⁵ LERS AND LEAS, *SOP Disciplinary and Adverse Actions* 1 (Jan. 2021).

¹⁸⁶ *Nationwide Agreement between Federal Deposit Insurance Corporation & National Treasury Employees Union* 140 (Sept. 2017).

¹⁸⁷ *Nationwide Agreement between Federal Deposit Insurance Corporation & National Treasury Employees Union* 137 (Sept. 2017); *SOP Conducting Management-Initiated Investigations* 3 (Dec. 2020).

¹⁸⁸ *Nationwide Agreement between Federal Deposit Insurance Corporation & National Treasury Employees Union* 140 (Sept. 2017); *SOP Conducting Management-Initiated Investigations* 5 (Dec. 2020).

¹⁸⁹ *Nationwide Agreement between Federal Deposit Insurance Corporation & National Treasury Employees Union* 140 (Sept. 2017).

¹⁹⁰ *Nationwide Agreement between Federal Deposit Insurance Corporation & National Treasury Employees Union* 137 (Sept. 2017); *SOP Conducting Management-Initiated Investigations* 3 (Dec. 2020); *Disciplinary and Adverse Actions Policy* 5–6 (Mar. 2021); LERS AND LEAS, *SOP Disciplinary and Adverse Actions* 2 (Jan. 2021).

¹⁹¹ U.S. MERIT SYSTEMS PROTECTION BOARD, *Appellant Questions and Answers*, <https://www.mspb.gov/updatelinks.htm> (last visited Apr. 18, 2024).

¹⁹² *Disciplinary and Adverse Actions Policy* 5–6 (Mar. 2021).

Under the Disciplinary and Adverse Actions SOP and the Collective Bargaining Agreement, for letters of admonishment or letters of reprimand, the management official issuing the letter must consider the following factors:

1. the degree of harm or interference that the act has caused;
2. the seriousness of the act in terms of the employee's position and assignment in the Corporation;
3. except in unusual cases which warrant severe penalties, whether the penalty is fair, equitable, and no more severe than that which sincere judgment indicates is required to correct the attitude or conduct of the employee or to correct the situation;
4. any past corrective action; and
5. any mitigating circumstances.¹⁹³

In the event of a suspension of any length, removal, reduction in grade or pay based on performance or conduct, or a furlough of 30 calendar days or less, management is required to consider what are called the "Douglas factors," described in further detail in "Applicable Legal Standards" in Appendix B of the Report.¹⁹⁴ There are no criteria in the Collective Bargaining Agreement or in the Disciplinary and Adverse Actions SOP for decisions that involve relocation but no change in an employee's grade or pay, or decisions removing any employee from a supervisory role without an impact on grade or pay.

Under the Disciplinary and Adverse Actions SOP and the Collective Bargaining Agreement, letters of admonishment and reprimand must be accompanied by any supporting evidence, and include the specific reasons for the action, the length of time it will remain in the employee's file, as well as the employee's right to file a grievance with the time limits for doing so.¹⁹⁵ The Collective Bargaining Agreement also mandates that, for bargaining unit employees, the file that is provided to the employee must include any written witness statements that were taken to support the action.¹⁹⁶ Should the employee submit a reply, LERS must ensure that it is attached to the letter of admonishment or reprimand in the employee's file.¹⁹⁷

For suspensions of any length, removals, reductions in grade or pay based on performance or conduct, or a furlough of 30 calendar days or less, the Disciplinary and Adverse Actions Policy, the Disciplinary and Adverse Actions SOP, and the Collective Bargaining Agreement mandate that the notice delivered to the employee state the charge(s) and specification(s) underlying the action being proposed, and inform the employee of their

¹⁹³ LERS AND LEAS, *SOP Disciplinary and Adverse Actions 2* (Jan. 2021); *Nationwide Agreement between Federal Deposit Insurance Corporation & National Treasury Employees Union* Article 45 (Sept. 2017).

¹⁹⁴ *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981); *Standard Operating Procedures (SOP) Disciplinary and Adverse Actions 2-3* (Jan. 2021).

¹⁹⁵ LERS AND LEAS, *SOP Disciplinary and Adverse Actions* (Jan. 2021).

¹⁹⁶ *Nationwide Agreement between Federal Deposit Insurance Corporation & National Treasury Employees Union* 138 (Sept. 2017).

¹⁹⁷ LERS AND LEAS, *SOP Disciplinary and Adverse Actions 2* (Jan. 2021).

right to file a reply orally and/or in writing, and the time limits for providing a reply.¹⁹⁸ If an employee chooses to make an oral reply, LERS must make sure that a verbatim transcript of the oral reply is created and later provided to the employee and/or their NTEU representative for corrections, which they must make within three business days of receipt.¹⁹⁹ LERS must also make sure that the management official that imposed the adverse action receives a copy of the transcript of the oral reply, as well as any written reply provided by the employee. The management official imposing the adverse action then issues a final written decision letter before the effective date of any action, including the FDIC’s findings with respect to each charge, specifications made against the employee, and the effective date of the action.²⁰⁰

For bargaining unit employees, the final decision letter must contain a statement affirming the employee’s right to file a grievance as stated in the negotiated grievance procedures, which are described more fully below in the “Policies, Procedures, Practices, and Trainings, National Treasury Employees Unit” Section of the Report.²⁰¹

C. Office of the Internal Ombudsman

The Office of the Internal Ombudsman, established in 2012,²⁰² provides informal assistance to all current and former employees to address work-related issues and concerns.²⁰³ There is a Standard Operating Procedure (“the Internal Ombudsman SOP”) meant to “set forth the procedures, protocols, and responsibilities within the Office of the Internal Ombudsman in an effort to standardize and improve effectiveness.”²⁰⁴ The Office of the Internal Ombudsman offers informal dispute resolution services and a confidential forum for employees to discuss work-related issues, brainstorm and evaluate options, and feel empowered to resolve specific situations on their own. The Office of the Internal Ombudsman also manages the Workplace Excellence Program (“WEP”), described below in the “Prior Programs, Reports, and Surveys Relating to Workplace Culture, Workplace Excellence Program and Team FDIC” Section of the Report, facilitates the FDIC-NTEU Labor Management Forum for fostering a better relationship between the union and management, and oversees the U.S. Office of Personnel Management (“OPM”) Federal Employee Viewpoint Survey.²⁰⁵ The Office of the Internal Ombudsman is headquartered in Arlington, Virginia and generally has a staff of eight employees, including the Ombudsman himself.²⁰⁶

¹⁹⁸ LERS AND LEAS, *SOP Disciplinary and Adverse Actions* 3 (Jan. 2021); *Disciplinary and Adverse Actions Policy* 5–6 (Mar. 2021); *Nationwide Agreement between Federal Deposit Insurance Corporation & National Treasury Employees Union* 144 (Sept. 2017).

¹⁹⁹ LERS AND LEAS, *SOP Disciplinary and Adverse Actions* 3–4 (Jan. 2021).

²⁰⁰ LERS AND LEAS, *SOP Disciplinary and Adverse Actions* 4 (Jan. 2021); *Disciplinary and Adverse Actions Policy* 5–6 (Mar. 2021).

²⁰¹ LERS AND LEAS, *SOP Disciplinary and Adverse Actions* 4 (Jan. 2021).

²⁰² Witness 583.

²⁰³ OFFICE OF THE INTERNAL OMBUDSMAN, *Standard Operating Procedures* 2 (Oct. 2022); OFFICE OF THE INTERNAL OMBUDSMAN, *Supporting FDIC Employees for More than a Decade Slide Deck* (Jan. 2024).

²⁰⁴ OFFICE OF THE INTERNAL OMBUDSMAN, *Standard Operating Procedures* 2 (Oct. 2022).

²⁰⁵ OFFICE OF THE INTERNAL OMBUDSMAN, *Supporting FDIC Employees for More than a Decade Slide Deck* 4, 5 (Jan. 2024).

²⁰⁶ Witness 583.

According to the Internal Ombudsman SOP, the Internal Ombudsman does not have investigative powers, but the office can coach employees, facilitate conversations between employees, and conduct pulse checks. These pulse checks are organizational assessments conducted primarily through confidential interviews or focus groups to better understand and improve the workplace environment.²⁰⁷ Pulse checks come about in two different forms: (1) if a manager makes a request, the Internal Ombudsman will inform their senior leadership before agreeing to conduct a pulse check to make sure that senior leadership is aware of the request; and (2) if several employees from the same organizational unit make a request, the Internal Ombudsman will agree to conduct a pulse check, but will inform their senior leadership. They do not initiate pulse checks at the request of a single employee, nor do they initiate pulse checks on their own. In recent years, the Internal Ombudsman has conducted a pulse check initiated by NTEU on two occasions.²⁰⁸

The Internal Ombudsman generally receives complaints, concerns, or questions regarding work-related issues, including allegations of harassment and other forms of interpersonal misconduct. An employee can contact the Office of the Internal Ombudsman by phone, by email, Microsoft Teams, or in person.²⁰⁹ As discussed in the Internal Ombudsman SOP, the Internal Ombudsman can advise employees about different reporting channels they can utilize, such as the EEO program, the Anti-Harassment Program, LERS and LEAS, or NTEU.²¹⁰ With permission, the Internal Ombudsman can also help employees make contact with another reporting channel, or make an initial call to another reporting channel on behalf of the employee.²¹¹

D. National Treasury Employees Union

The National Treasury Employees Union (“NTEU”) represents federal employees in 35 departments and agencies, including the FDIC.²¹² The FDIC NTEU has chapters in each of the FDIC’s regional offices, with chapter presidents in the FDIC’s headquarters, Chicago, New York (including the Boston area), Dallas, San Francisco, Kansas City, Atlanta, and Memphis.²¹³

The NTEU can support an FDIC bargaining unit employee filing a negotiated grievance, and can also file a grievance on behalf of an FDIC bargaining unit employee, related to any matter concerning employment, including allegations of harassment and other forms of interpersonal misconduct. The negotiated grievance process can involve four steps: (1) step one: a written grievance to an immediate or first level supervisor; (2) step two: an appeal of the

²⁰⁷ OFFICE OF THE INTERNAL OMBUDSMAN, *Standard Operating Procedures* 9 (Oct. 2022).

²⁰⁸ Witness 583.

²⁰⁹ OFFICE OF THE INTERNAL OMBUDSMAN, *Supporting FDIC Employees for More than a Decade Slide Deck* 4, 5 (Jan. 2024).

²¹⁰ OFFICE OF THE INTERNAL OMBUDSMAN, *Standard Operating Procedures* 8 (Oct. 2022).

²¹¹ Witness 583.

²¹² NATIONAL TREASURY EMPLOYEES UNION, *Who We Are*, <https://www.nteu.org/who-we-are> (last visited Apr. 18, 2024).

²¹³ The Memphis Regional Office no longer exists, but there is a separate NTEU chapter that continues to represent the area. *Nationwide Agreement between Federal Deposit Insurance Corporation & National Treasury Employees Union* 134 (Sept. 2017).

grievance to the second level supervisor; (3) step three: an appeal of the grievance to the relevant division/office director; and (4) step four: an appeal of the grievance to the Chairman or their designee. Arbitration may also be available if a grievant is not satisfied with the step three or step four decision. A bargaining unit employee is entitled to representation by an NTEU representative for any formal discussion between the FDIC and the grievant. A bargaining unit employee may pursue a claim of discrimination through the negotiated grievance procedure or EEOC process, but not both.²¹⁴ An employee is deemed to have elected a procedure at the time that they file a grievance or file a formal discrimination complaint, whichever event happens first.²¹⁵

Administrative grievance procedures for non-bargaining unit employees do not apply to matters that would fall under the purview of MSPB, OPM, or EEOC.²¹⁶ Further, “[a]n allegation of discrimination made in connection with a grievance is separated from the grievance,” and the grievant should separately discuss the discrimination allegation with an EEO Counselor.²¹⁷ Administrative grievances are similar to negotiated grievances, except that they have fewer steps.²¹⁸ Step one consists of a written grievance presented to the employee’s Grievance Official, generally their immediate supervisor. Step two is a review of the step one grievance decision by a Deciding Official, who is either the Chief Human Capital Officer or her or his designated management official. Step two grievance decisions are final and not subject to further review or appeal.

E. Office of Inspector General

The FDIC’s Office of Inspector General (“OIG”) is an independent organizational unit that audits, evaluates, investigates, and conducts other reviews of the FDIC’s programs and operations.²¹⁹ OIG is headquartered in Arlington, Virginia, but Special Agents in Charge sit in the FDIC’s regional offices.²²⁰ As part of its mission, OIG generally accepts and investigates complaints regarding allegations of waste, fraud, or abuse related to the programs and operations of the FDIC, including allegations of wrongdoing by FDIC employees and contractors, criminal activity involving FDIC-insured banks, and whistleblower retaliation. A hotline complaint can be submitted to OIG through an online portal (with an option to submit anonymously), by phone, by mail,²²¹ or in person to a regional Special Agent-In-Charge.

²¹⁴ *Nationwide Agreement between Federal Deposit Insurance Corporation & National Treasury Employees Union* 147–152 (Sept. 2017).

²¹⁵ *EEOC Discrimination Complaint Process Policy* (Nov. 2015).

²¹⁶ *Grievances, Directive 2700.01* (“Grievance Procedures Policy”) 13 (July 2022).

²¹⁷ *Grievance Procedures Policy* 13 (July 2022).

²¹⁸ Witness 251.

²¹⁹ FDIC OFFICE OF INSPECTOR GENERAL, *About Us*, <https://www.fdicigoig.gov/about-us> (last visited Apr. 18, 2024).

²²⁰ FDIC OFFICE OF INSPECTOR GENERAL, *Contact Us*, <https://www.fdicigoig.gov/contact-us/contact-us> (last visited Apr. 18, 2024).

²²¹ FDIC OFFICE OF INSPECTOR GENERAL, *Report Fraud, Waste, Abuse, & Mismanagement to the FDIC OIG Hotline*, <https://www.fdicigoig.gov/oig-hotline> (last visited Apr. 18, 2024).

F. Office of Special Counsel

The Office of Special Counsel (“OSC”) is an independent federal investigative and prosecutorial agency that is not specifically affiliated with the FDIC. Its primary mission is to safeguard against prohibited personnel practices, such as discrimination, nepotism, and obstructing competition.²²² It also operates as a reporting channel through which federal employees can report wrongdoing surrounding a violation of a law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; substantial and specific danger to public health and safety; and/or censorship related to research, analysis, or technical information.²²³ The OSC generally does not accept complaints regarding allegations of discrimination or EEO retaliation to avoid duplication of procedures established through EEOC, but it does accept complaints regarding allegations of discrimination not covered by EEO processes, such as discrimination based on political affiliation or marital status. A hotline complaint can be submitted to the OSC by an online portal (with an option to submit anonymously) or by email.²²⁴

G. Internal Groups

FDIC has several Employee Resource Groups (“ERGs”) that support their members and serve as forums for open discussions. ERGs are not a formal or informal reporting channel at the FDIC. We include them in this section because they are relevant avenues of support for people who may have experienced harassment, discrimination, or other interpersonal misconduct. The ERGs at the FDIC include: Association of African American Professionals (“A3P”), Corporate Advocacy Network for Disability Opportunities (“CAN DO”), Heritage of Asian American Pacific Islanders (“HAAPI”), Hispanic Organization for Leadership and Advancement (“HOLA”), Networking Inclusion and Advancement for African-American Women (“NIA Women”), Partnership of Women in the Workplace (“POWW”), and PRIDE.²²⁵ Under the ERG Pilot Program, a six-month initiative that launched in early 2024, members of a recognized ERG have one hour of official “duty time” to work on their ERG every month as well as a budget of up to \$2,500 per year.²²⁶ Each ERG meets with the Chairman yearly²²⁷ and has been doing so for at least two years. Before the Pilot Program, there was no official funding or allotted duty time for any of the ERGs.²²⁸

²²² U.S. OFFICE OF SPECIAL COUNSEL, *Prohibited Personnel Practices Overview*, <https://osc.gov/Services/Pages/PPP.aspx> (last visited Apr. 18, 2024).

²²³ U.S. OFFICE OF SPECIAL COUNSEL, *Disclosure of Wrongdoing Overview*, <https://osc.gov/Services/Pages/DU.aspx> (last visited Apr. 18, 2024).

²²⁴ U.S. OFFICE OF SPECIAL COUNSEL, *File a Complaint*, <https://osc.gov/Pages/File-Complaint-Portal.aspx> (last visited Apr. 18, 2024).

²²⁵ OMWI, *Employee Resource Groups (ERGs) Flyer* (undated).

²²⁶ Witness 424.

²²⁷ OMWI, *ERG Establishment Information Chart* (Apr. 2024).

²²⁸ Witness 424.

A3P was formed in 2018²²⁹ and, as of April 2024, had 300 members.²³⁰ Their mission is to “provide a network of professional tutelage to support the career growth and development for FDIC African American employees; support the recruitment, hiring and advancement of African American employees in the FDIC; advocate for the inclusion of African American employees in FDIC leadership opportunities; assist the FDIC in advancing its strategic diversity and inclusion goals; and support the public image and presence of the FDIC through participation in outreach activities to education institutions and organizations that support to equal opportunity for African Americans.”²³¹

CAN DO was formed in August 2017 and, as of April 2024, had 79 members.²³² Their mission is “to provide a forum that allows all FDIC employees with disabilities and advocates to broaden their understanding regarding people with disabilities through sharing ideas, networking, and performing internal and external activities that support FDIC’s employees or staff who have family members with disabilities, and to assist in the appreciation and advancement of the FDIC’s diversity program by: providing a forum and space for any and all FDIC employees who have an interest in issues affecting employees with disabilities; creating a support community and network among employees with disabilities as well as liaison with other disability resources in the federal sector; promoting education and informal materials on disability issues and opportunities of importance in FDIC, the federal sector, and the nation at large; working with appropriate FDIC entities to contribute to and support the career and/or personal development of FDIC employees with disabilities; and supporting FDIC efforts to recruit and retain employees with disabilities.”²³³

HAAPI was formed in 2019, and as of April 2024, had 70 members. Their mission is “to promote recognition and respect for diversity and to create a workplace environment which values all employees by: promoting dialogues on issues affecting Asian American and Pacific Islanders (AAPI); connecting with partner ERGs at other regulatory agencies to broaden the AAPI employee network; assisting in providing members with a resource to develop and advance their careers through training, mentorship, and information on various opportunities and assignments; and conducting events and activities for all employees to raise the awareness of the AAPI culture and history in order to promote mutual understanding and respect of cultural differences.”²³⁴

HOLA was formed in 2015 and, as of April 2024, had 160 members.²³⁵ Their mission is “to support Hispanic[] FDIC employees and facilitate a more inclusive workplace by:” “assisting in the recruitment and retention of Hispanics”; “encouraging professional relationships and mentorship among Hispanic employees across all grade levels and positions”;

²²⁹ *Association of African American Professionals (“A3P”) Memo to the Special Review Committee* (Dec. 2023); OMWI, *ERG Establishment Information Chart* (Apr. 2024).

²³⁰ OMWI, *ERG Establishment Information Chart* (Apr. 2024).

²³¹ *Screenshot from Intranet, A3P* (Apr. 2024).

²³² *Corporate Advocacy Network for Disability Opportunities (“CAN DO”) Slide Deck* (Feb. 2024); OMWI, *ERG Establishment Information Chart* (Apr. 2024).

²³³ *CAN DO Slide Deck* (Feb. 2024); *Screenshot from Intranet, CAN DO* (Apr. 2024).

²³⁴ *Screenshot from Intranet, Heritage of Asian American Pacific Islanders (“HAAPI”)* (Apr. 2024); OMWI, *ERG Establishment Information Chart* (Apr. 2024).

²³⁵ OMWI, *ERG Establishment Information Chart* (Apr. 2024).

“educating and facilitating discussion of Hispanic issues in the workplace”; “supporting regional and national diversity, equity, and inclusion initiatives”; and “assisting in the development of consumer resources in Spanish.”²³⁶

NIA Women was formed in 2018 and, as of April 2024, had 195 members.²³⁷ Their mission is to “advance a diverse and inclusive work environment for current and future employees with a particular focus on African-American women; support opportunities to educate and provide activities to attract, retain, empower, and inspire African-American women; help African-American women employees achieve their fullest potential across the spectrum of professional development; foster conversations and cultural emphasis on diversity and inclusion of African-American women in the workplace; and provide a forum for outreach activities and discussion addressing the unique concerns of African American women arising from the intersection of their race and gender.”²³⁸

POWW was formed in September 2015 and has chapters in San Francisco, Dallas, Kansas City, and POWW East (consisting of headquarters, Atlanta, and New York). As of April 15, 2024, POWW had 571 members across genders.²³⁹ Their mission is “to provide support to women and facilitate a more inclusive workplace and understanding among genders by; providing an arena for discussion of women’s issues in the workplace”; “encouraging professional relationships and mentorship among women across all grade levels and positions”; “supporting the recruitment and retention of women at the FDIC”; “educating members on gender issues, with particular focus on creating allies”; and “empowering women at every level of the corporate to participate fully, seek career development opportunities, and set high goals while maintaining work-life balance.”²⁴⁰

PRIDE was formed in 2015 and, as of April 2024, had 120 members.²⁴¹ Their mission is “to promote recognition and respect for diversity and to create a workplace environment which values all employees by: promoting dialogue among lesbian, gay, bisexual, transgender (LGBT) and straight FDIC employees; conducting programs and activities to educate FDIC employees about sexual orientation and gender identify, including LGBT employee issues and concerns; serving as a resource to management to identify potential strategies to eliminate barriers and disadvantages faced by any employees and/or their families, regardless of sexual orientation or gender identity; and, encouraging management to publicly acknowledge and support LGBT employees.”²⁴²

²³⁶ Screenshot from Intranet, *Hispanic Organization for Leadership and Advancement (“HOLA”)* (Apr. 2024).

²³⁷ OMWI, *ERG Establishment Information Chart* (Apr. 2024).

²³⁸ Screenshot from Intranet, *Networking Inclusion and Advancement for African-American Women (“NIA”)* (Apr. 2024).

²³⁹ Partnership of Women in the Workplace (“POWW”) Deck (Dec. 2023); OMWI, *ERG Establishment Information Chart* (Apr. 2024).

²⁴⁰ Screenshot from Intranet, *POWW* (Apr. 2024).

²⁴¹ Witness 508; OMWI, *ERG Establishment Information Chart* (Apr. 2024).

²⁴² Screenshot from Intranet, *PRIDE* (Apr. 2024).

HISTORICAL RECORDS REGARDING DISCRIMINATION, HARASSMENT, AND OTHER COMPLAINTS

The FDIC publishes external reporting each year as required under federal law relating to the number of administrative Equal Employment Opportunity (“EEO”) formal complaints made by employees, as well as the number of reports of harassment made through the FDIC’s Anti-Harassment Program (“AHP”), including whether those reports resulted in employee discipline. Internally, since around the March to May 2023 timeframe, the Division of Administration’s Labor and Employee Relations Section (“LERS”) has maintained a database of investigations of complaints, and specifically identified which ones contain allegations falling under the AHP.²⁴³ Prior to that time, LERS’s files relating to investigations arising out of harassment allegations were maintained in hard copy file rooms, individual local folders of LERS specialists, and other incomplete systems used by LERS.²⁴⁴ As referenced in the “Document Collection and Review, The Review Process” Section of the Report, the FDIC produced certain exports from these systems in response to our document requests.

Separately, FDIC’s Legal Division maintains its own matter management system for legal matters called ALIS, which is not used or intended to be a comprehensive case tracking system for harassment-related complaints. The Legal Division’s Labor, Employment, and Administration Section (“LEAS”) provided us with an export of cases from this system from 1998 to 2024 that they determined involved sexual harassment or other interpersonal misconduct. LEAS also provided us with a list of active investigations from June 2, 2023 to March 1, 2024.

Since around mid-January 2024, the AHP has been tracking incoming complaints and provided a spreadsheet containing reports received through that program from mid-January 2024 to late March 2024. We summarize below the records of these reports made externally relating to harassment and other interpersonal misconduct, as well as those maintained internally by LERS, LEAS, and the AHP below.

I. External Reporting

Each year, the FDIC publishes a statistical report (the “No FEAR Act Annual Report” provided to Congress) including administrative Equal Employment Opportunity formal complaints made by employees. EEO formal complaints allege discrimination based on protected categories, including race, national origin, gender, and religion, as well as reprisal. The report also includes statistics relating to inquiries or complaints under the FDIC’s AHP. The AHP “covers both unlawful discriminatory harassment and harassment not covered by anti-discrimination statutes.”²⁴⁵ The number of (1) administrative EEO formal complaints filed

²⁴³ LERCT.

²⁴⁴ Witness 475; Witness 587; Witness 575.

²⁴⁵ NO FEAR ACT ANNUAL REPORT TO CONGRESS (2022), <https://www.fdic.gov/about/diversity/nofear/nofearreportfy2022.pdf>.

and (2) inquiries or complaints made through the AHP and resulting discipline, as reported by the FDIC, for fiscal years 2015 to 2023 is as follows.²⁴⁶

	<u>Administrative EEO</u>	<u>Anti-Harassment Program</u>		
Year²⁴⁷	Formal Complaints	Total Inquiries/ Complaints	Unsubstantiated; Withdrawn; Discontinued; Ongoing	Outcomes
2015	33	0	<ul style="list-style-type: none"> • Not applicable 	<ul style="list-style-type: none"> • Not applicable
2016	40	9	<ul style="list-style-type: none"> • 4 Unsubstantiated • 1 Withdrawn • 1 Discontinued 	<ul style="list-style-type: none"> • 3 inquiries resulted in 1 counseling, 1 letter of warning, and additional training
2017	30	9	<ul style="list-style-type: none"> • 5 Unsubstantiated • 1 Discontinued • 1 Ongoing 	<ul style="list-style-type: none"> • 2 inquiries resulted in 1 letter of warning, and 1 suspension

²⁴⁶ NO FEAR ACT ANNUAL REPORT TO CONGRESS (2015), <https://www.fdic.gov/about/diversity/nofear/nofearreportfy2015.pdf>;
 NO FEAR ACT ANNUAL REPORT TO CONGRESS (2016), <https://www.fdic.gov/about/diversity/nofear/nofearreportfy2016.pdf>;
 NO FEAR ACT ANNUAL REPORT TO CONGRESS (2017), <https://www.fdic.gov/about/diversity/nofear/nofearreportfy2017.pdf>;
 NO FEAR ACT ANNUAL REPORT TO CONGRESS (2018), <https://www.fdic.gov/about/diversity/nofear/nofearreportfy2018.pdf>;
 NO FEAR ACT ANNUAL REPORT TO CONGRESS (2019), <https://www.fdic.gov/about/diversity/nofear/nofearreportfy2019.pdf>;
 NO FEAR ACT ANNUAL REPORT TO CONGRESS (2020), <https://www.fdic.gov/about/diversity/nofear/nofearreportfy2020.pdf>;
 NO FEAR ACT ANNUAL REPORT TO CONGRESS (2021), <https://www.fdic.gov/about/diversity/nofear/nofearreportfy2021.pdf>;
 NO FEAR ACT ANNUAL REPORT TO CONGRESS (2022), <https://www.fdic.gov/about/diversity/nofear/nofearreportfy2022.pdf>;
 NO FEAR ACT ANNUAL REPORT TO CONGRESS (2023), <https://www.fdic.gov/about/diversity/nofear/no-fear-annual-report-to-congress.pdf>.

²⁴⁷ The reporting in this table reflects data from October 1 to September 30 each year.

	<u>Administrative EEO</u>	<u>Anti-Harassment Program</u>		
Year ²⁴⁷	Formal Complaints	Total Inquiries/ Complaints	Unsubstantiated; Withdrawn; Discontinued; Ongoing	Outcomes
2018	33	14	<ul style="list-style-type: none"> • Unavailable 	<ul style="list-style-type: none"> • 3 inquiries resulted in additional training and counseling, and 1 suspension
2019	43	15	<ul style="list-style-type: none"> • 1 pending management action 	<ul style="list-style-type: none"> • 1 inquiry resulted in additional training
2020	31	6	<ul style="list-style-type: none"> • 3 Unsubstantiated 	<ul style="list-style-type: none"> • 2 inquiries resulted in oral counseling • 1 inquiry resulted in letter of reprimand issued
2021	29	15	<ul style="list-style-type: none"> • 13 Unsubstantiated 	<ul style="list-style-type: none"> • 2 investigations resulted in verbal counseling
2022	27	8	<ul style="list-style-type: none"> • 6 Unsubstantiated • 1 Ongoing • 1 recommended for alternative dispute resolution 	<ul style="list-style-type: none"> • None
2023	35	16	<ul style="list-style-type: none"> • 10 No policy violation • 1 Resulted in restructuring of office and new supervisor • 3 Ongoing 	<ul style="list-style-type: none"> • 1 complaint resulted in letter of counseling issued • 1 complaint resulted in letter of reprimand issued

The FDIC’s official statistics reported to Congress, as noted in the chart above, reflect that there have been on average about ten harassment complaints made and recorded through the FDIC’s AHP each year (ninety-two total over nine years) from 2015 to 2023. Of those ninety-two complaints over a nine year period, none resulted in removal, reductions in grade or pay, or any discipline more serious than a suspension. There were only two suspensions and two letters of reprimand resulting from the complaints. Approximately twelve inquiries resulted in counseling, warnings, or additional training. The rest resulted in no discipline at all.

II. Internal Records

Prior to about 2020, records relating to investigations of harassment or other misconduct conducted by LERS were maintained in hard copy form in file rooms, individual local folders of LERS specialists, and in a system called Corporate Human Resources Information System (“CHRIS”).²⁴⁸ They were not maintained in a manner that was centralized or easily searchable by type or category of investigation. CHRIS was a database that maintained information related to many different human resources functions, just one of which was investigations conducted by LERS. And we understand that records related to harassment or other misconduct investigations were not maintained in a comprehensive way within the CHRIS system.²⁴⁹

Around 2020, LERS introduced a new system, using a third-party vendor that offered a tool called the Labor and Employee Relations Information System (“LERIS”). Although LERIS was introduced to track and store information related to various LERS functions, including investigations, there were a number of challenges and problems in its implementation and functionality.²⁵⁰ As a result, around October 2022, LERS created a new system, using Microsoft Sharepoint, that it called the Labor Employee Relations Case Tracker (“LERCT”). Initially, the system had one database within it, called “LERCT ER”, which tracked both investigations as well as other employee relations actions (such as grievances), and stored records related to those actions. Around the March to May 2023 timeframe, in response to suggestions from LERCT ER users, LERS made modifications to the LERCT system by breaking it up into multiple different databases. The system is now comprised of different databases covering LERS functions, including “Investigations”, “Employee Relations”, “Administrative Grievances”, and “Client Services”, among others. The FDIC provided us with an export of the data available in the “Investigations” and “Employee Relations” databases within LERCT, as well as exports from the LERCT ER, LERIS, and CHRIS systems for the period from 2008 to March 2024. The FDIC also provided us with certain files from individual LERS specialists’ folders, to the extent they had documents that were saved separately from these systems and retrievable.

The export of the CHRIS database we reviewed contained data from 2008 through 2021. The database does not specifically identify whether a case falls under the FDIC’s AHP. It indicates a “Reason” for discipline, such as “Harassment”, “Harassment –

²⁴⁸ Witness 475; Witness 587; Witness 575.

²⁴⁹ Witness 475; Witness 488.

²⁵⁰ Witness 475.

Sexual”, “Inappropriate Conduct”, “Offensive Behavior”, and “Threats/Intimidation”, among other (sometimes overlapping) categories.²⁵¹ The classification of cases in CHRIS was dependent on LERS specialists inputting data.²⁵² The data in CHRIS for 2008 through 2021 include just two cases classified as “Harassment – Sexual” and seven cases classified as “Harassment.”²⁵³

The exports from the LERIS and LERCT ER databases we received collectively contain data from 2020 through 2023—LERIS has data from February 2020 to January 2023, and LERCT ER has data from January 2021 to August 2023. Although LERCT ER was introduced to replace LERIS, it appears that some LERS specialists continued to use LERIS to track their cases for at least some period of time. Neither database specifically identified whether a case fell under the FDIC’s AHP. The classification of cases in LERIS was based on broad descriptors such as “Advice”, “Reprimand”, “Misconduct”, and “Poor Performance”, among others, making the classifications of cases largely dependent on the LERS specialist inputting the data.²⁵⁴ LERCT ER indicated whether a case is classified as “Harass/Discrimination.” The data in LERCT ER for January 2021 to August 2023 includes seven cases classified as Harass/Discrimination, all of which were opened between May 2022 to February 2023.²⁵⁵

The export of the “Investigations” database within LERCT we received includes cases dating as far back as May 2022. Although the Investigations database was introduced around the March to May 2023 timeframe, it appears that some LERS specialists continued to use LERCT ER until as late as August 2023, and not all of the cases from LERCT ER were carried over to the Investigations database. From May 2022 until November 13, 2023 (the date of the publication of the first *Wall Street Journal* article), the Investigations database identifies eight cases as falling under the AHP. None of these cases are identified as involving allegations of sexual harassment—all eight are classified as hostile work environment cases. Since the publication of the first *Wall Street Journal* article on November 13, 2023 through March 6, 2024, the database identifies twenty-nine cases as falling under the AHP. Of these, twelve are classified as “Sexual Harassment” cases or “Mixed Cases” that, based on their description in the database, appear to include allegations of sexual harassment. The remaining seventeen are classified as hostile work environment or misconduct cases.²⁵⁶

As noted above, the FDIC’s Legal Division maintains a matter management system called ALIS. LEAS identified and provided us with an export of entries in its ALIS that potentially involved allegations of sexual harassment or other interpersonal misconduct, including but not limited to bullying and discrimination.²⁵⁷ Around late November or early December 2023, following the large influx of complaints after the publication of the first *Wall Street Journal* article, LEAS began maintaining a list of ongoing investigations separate from

²⁵¹ CHRIS.

²⁵² Witness 475.

²⁵³ CHRIS.

²⁵⁴ LERIS.

²⁵⁵ LERCT ER.

²⁵⁶ LERCT.

²⁵⁷ ALIS.

ALIS to ensure a LEAS attorney was being assigned to each investigation.²⁵⁸ This list reflects that LEAS has thirty-four active cases from June 2, 2023 to March 1, 2024 involving allegations of sexual harassment or other interpersonal misconduct, and thirty-one of these were opened after the publication of the first *Wall Street Journal* article on November 13, 2023.²⁵⁹

It does not appear that the AHP maintains a centralized system that allows for complete searches of historical complaints made to the AHP and tracking of incoming complaints.²⁶⁰ The AHP has been tracking incoming complaints since around mid-January 2024. In response to our document requests, the FDIC provided a spreadsheet containing reports received by the AHP between mid-January 2024 and late March 2024.²⁶¹ The spreadsheet notes that forty-two reports of harassment were received during that period. This reflects a dramatic increase in the rate of recorded reports of harassment, as the forty-two reports in the first quarter of 2024 alone, more than quadruples the average full annual reports to the AHP of ten in the prior ten years.

²⁵⁸ Witness 281.

²⁵⁹ LEAS, *Investigations Assignments Table* (Mar. 4, 2024).

²⁶⁰ Witness 660.

²⁶¹ OWMI, *Anti-Harassment Program Intake Tracker* (2024).

PRIOR PROGRAMS, REPORTS, AND SURVEYS RELATING TO WORKPLACE CULTURE

Over the years, the FDIC has had a number of initiatives, programs, surveys, and reports that provided reflections of its workplace culture. While these have all noted the employees' pride about and commitment to the FDIC's mission, they also have consistently raised common issues as well, including relating to accountability, insularity, discrimination, fear of retaliation, hierarchy, and risk aversity, among others. Survey results and internal employee group presentations have also echoed many of these concerns, and the FDIC has generally been undergoing a decline in favorability ratings in employee surveys in recent years. With respect to sexual harassment specifically, a 2020 OIG report from a review conducted in 2018 and 2019, concluded that "the FDIC had not established an adequate sexual harassment prevention program," and that it needed to make improvements to "its policies, procedures, and training to facilitate the reporting of sexual harassment allegations and address reported allegations in a prompt and effective manner."²⁶² The FDIC has also over the years entered into a number of settlements of actions brought by employees alleging systemic discrimination. A number of relevant surveys, initiatives, programs, and reports are summarized below.

I. Federal Employee Viewpoint Survey Results

The U.S. Office of Personnel Management ("OPM") conducts an annual Federal Employee Viewpoint Survey ("FEVS" or "FEV survey") of government agency employees. FEV surveys are conducted by the OPM annually for employees of various federal departments and agencies, including the FDIC, to assess the "policies, practices, and procedures characteristic of their agency and its leadership."²⁶³ The surveys include "items" across various categories, such as "Leadership," "My Organization," "My Satisfaction," or "Diversity, Equity, Inclusion, and Accessibility," and agencies are able to add items "tailored specifically to issues of interest to the agency." Employees are given options to respond to the items positively, negatively, or neutrally.²⁶⁴

The Partnership for Public Service, a nonprofit third party, maintains a "best place to work" ranking that assesses how employees view their workplaces based on the results of the FEVS. After maintaining its "best place to work" ranking as first in terms of favorability ratings among midsize agencies from 2011 to 2016,²⁶⁵ the FDIC's rank steadily dropped to 8th place in 2021, and suffered an even steeper decline to 17th place out of 27 midsize agencies in 2022.²⁶⁶

²⁶² FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT (2020), <https://www.fdicigoig.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

²⁶³ OPM, *About Federal Employee Viewpoint Survey*, <https://www.opm.gov/fevs/about/> (last visited Apr. 18, 2024).

²⁶⁴ OPM, 2022 OPM FEVS TECHNICAL REPORT 2-27 (2022), <https://www.opm.gov/fevs/reports/technical-reports/technical-report/technical-report/2022/2022-technical-report.pdf>.

²⁶⁵ 2011 ANNUAL REPORT 5 (2011), <https://www.fdic.gov/about/financial-reports/reports/2011annualreport/AR11final.pdf>; *FDIC Best/Most Improved Federal Place to Work* 1 (May 2012).

²⁶⁶ PARTNERSHIP FOR PUBLIC SERVICE, *2022 Best Places to Work in the Federal Government Rankings*, <https://bestplacetowork.org/rankings/?view=overall&size=mid&category=leadership&> (last visited Apr. 18, 2024).

As the chart below reflects, in 2010, 88% of those surveyed responded favorably and 4% responded unfavorably regarding their “Overall Satisfaction” at the FDIC. The favorability numbers have gradually declined over the years, falling dramatically after 2020 to just 62% responding favorably. The unfavorable responses also increased from 4% in 2010, to 21% in 2023.²⁶⁷

Year²⁶⁸	Favorable Response Global Satisfaction Index	Unfavorable Response Global Satisfaction Index
2023	62%	21%
2022	64%	19%
2021	74%	12%
2020	80%	8%
2019	84%	5%
2018	83%	6%
2017	84%	5%
2016	83%	7%
2015	83%	6%
2014	84%	5%
2013	84%	5%
2012	85%	5%
2011	86%	5%
2010 ²⁶⁹	88%	4%

Employees may also submit narrative comments as part of the FEVS. For example, from 2021 to 2023, employees were asked to describe “one suggestion they have to improve [the] FDIC and what they like best about the organization.”²⁷⁰ From 2016 to 2019, employees could provide comments based on several categories, such as “Empowerment & Decision Making,” “Overall Satisfaction,” “Fairness & Diversity,” or “Leadership Overall.” Although as noted below, certain of the FEVS comments included issues relating to the overall workplace culture, many comments from over the years include those from FDIC employees who enjoy a positive sense of mission and loyalty to the institution, the compensation levels, and their colleagues. For example, an employee from ██████████ commented in 2017: “I am proud of the mission of FDIC and how we work together during crisis to overcome

²⁶⁷ 2010 All Employee Survey – Results Overview Report 22 (Apr. 2011); OPM, *FDIC 2023 OPM Federal Employee Viewpoint Survey Results* 4 (Dec. 2023).

²⁶⁸ OPM, *FDIC OPM Federal Employee Viewpoint Survey Results 2011-2023*.

²⁶⁹ 2010 All Employee Survey – Results Overview Report 22 (Apr. 2011).

²⁷⁰ Email re: FDIC 2023 FEVS Comments (Dec. 19, 2023).

challenges.”²⁷¹ In 2018, an employee in the [REDACTED] office commented, “I am impressed with the character and dedication of my co-workers and managers. We are a diverse group (not only by race and gender but by prior work and life experience) but all work together well.”²⁷² In 2019, an employee from [REDACTED] commented, “The professionalism is second to none. The FDIC hires diverse, highly intelligent, and innovative personnel. The pay and benefits are fantastic and the facilities are top notch. Senior management has extensive experience with the FDIC and/or other agencies.”²⁷³ In 2022, an employee from [REDACTED] commented, “I love that FDIC is such a great workplace that it retains its employees long term which creates a strong work community.”²⁷⁴ In 2023, an employee from [REDACTED] commented, “I enjoy my sense of purpose and pride regulating an industry I strongly believe should be regulated. My job matters.”²⁷⁵ With respect to complaints, there were many comments on the subject of telework, which appears to have been a subject of focus for many employees who put in FEVS comments, including (as noted below) with respect to the post-COVID return to office policy.

Between approximately 2012 and 2019, FDIC had contracted with the OPM to receive annual analyses which provided an overview of comments and “themes” that emerged from the FEVS.²⁷⁶ Of relevance to the issues of workplace misconduct that are the subject of this review, OPM’s analyses identified themes and trends relating to a hostile work environment, fear of retaliation, favoritism, disparate treatment among employees, discrimination, lack of accountability, as well as a risk averse and insular culture. Included below are additional details from the OPM’s analyses of these particular themes, as well as examples of specific, selected comments from FDIC employees that reflect the same themes:

- **Hostile Work Environment.** A number of employees who submitted comments over the years claimed they were working in a hostile or toxic environment and that individuals perpetrating bullying or toxic behavior were not disciplined or held accountable. The OPM’s analysis of 2015 FEVS comments showed that “[s]everal respondents commented that they feel they work in a hostile work environment that is often a result of domineering leadership employing a bullying, autocratic approach. Employees feel belittled by management and do not feel they have an avenue for raising their concerns without reprisal.”²⁷⁷ In 2017, OPM’s analysis showed that 13 out of 71 comments relating to the topic “Improve Leadership” “blamed poor leadership and abrasive supervisor behavior for their hostile work environment and low morale of the team.” In the same year, on the topic of “Accountability,” 8 out of 71 commenters “wanted supervisors to be held more accountable especially for bullying staff.” 18 out of 106 commenters on the topic of “Lack of Leadership” “complained of harassment, bullying, and defensive demeanor/retaliation that created a toxic work environment. They wanted

²⁷¹ *FEVS Comments Spreadsheet* (2017).

²⁷² *FEVS Comments Spreadsheet* (2018).

²⁷³ *FEVS Comments Spreadsheet* (2019).

²⁷⁴ *FEVS Comments Spreadsheet* (2022).

²⁷⁵ *FEVS Comments Spreadsheet* (2023).

²⁷⁶ Witness 583.

²⁷⁷ *FEVS Comment Analysis 15* (2014).

leaders to be held more accountable for their lack of ethics and professionalism in the workplace.”²⁷⁸ In 2018, OPM’s analysis reflected that 12 out of 74 comments relating to work environment “suggested more could be done to ensure a safe, fair, and respectful working environment for all.”²⁷⁹

An employee from ██████████ commented in 2019 that management encouraged a hostile work environment and discriminated against a female employee with an accent, refused to discuss bullying issues, and made the commenter feel “isolated” after they raised concerns about the situation.²⁸⁰

An employee suggested in 2021 that an impartial group reach out to all Office of Minority and Women Inclusion (“OMWI”) staff because they were “fearful to come forward.”²⁸¹ Two employees in 2022 commented about OMWI senior leadership, including that leadership should “treat OMWI employees with respect.”

In 2022, an employee commented that the ██████████ field office was a toxic work environment, had a “poor management group,” and “lots of favoritism and discrimination practices are taking place.” In 2022, an employee from ██████████ commented: “Nothing has changed, the same-old OCFI problems continue with no end in sight. People of color, women, and older employees are still treated like dirt and cut out of projects.”²⁸²

In 2023, an employee in the ██████████ region commented: “Supervisors and management’s response to recent complaints from multiple resources about inappropriate dialog[ue] and jokes while on an examination at an institution (sexist, racist, political, homophobic, transphobic) was an email sent out, and a bigger focus on recruitment, instead of addressing the root cause of the poor office culture. While plenty of interns and [Financial Institution Specialist, or examiner-in-training] positions have been hired over the past several years, only a few remain specifically due to poor work environment and a toxic culture. Further, specific field office culture must be improved to be inclusive of new employees, to not show favoritism, and to not tolerate inappropriate jokes and comments from certain senior commissioned examiners.”²⁸³

- **Fear of Retaliation.** Comments over time also reflected concerns about fear of retaliation at the FDIC. A theme identified in the 2015 and 2016 OPM analyses included that “suggested directives from headquarters are rarely questioned or challenged due to problems with [group think] and a fear of retaliation for

²⁷⁸ *FEVS High Level Comment Summary 3* (2017).

²⁷⁹ *FEVS High Level Comment Summary 4* (2018).

²⁸⁰ *FEVS Comments Spreadsheet* (2019).

²⁸¹ *FEVS Comments Spreadsheet* (2021).

²⁸² *FEVS Comments Spreadsheet* (2022). The Division of Complex Institution Supervision and Resolution (“CISR”) was a new division formed in 2019 to address issues relating to large and complex financial institutions and included what was previously known as FDIC’s Office of Complex Financial Institutions (“OCFI”).

²⁸³ *FEVS Comments Spreadsheet* (2023).

voicing opinions.”²⁸⁴ “Respondents also expressed the desire to have safe channels to report unacceptable treatment without fear of retaliation.”²⁸⁵

In 2018, an employee in the ██████ region commented, “Employees are not encouraged to provide feedback and suggestions up the line, in particular if it is bad news. In fact, employees, such as myself, have been retaliated against for providing suggestions for improvement after having been requested for such feedback. Culture around this needs to change and empower employees to feel they can provide meaningful feedback without fear of reprisal.”²⁸⁶ In 2022, an employee from ██████ commented, “There should be anonymous feedback mechanisms on the performance of supervisors. Many times employees focus on satisfying supervisor’s ego than doing or saying the right thing that’s beneficial to the agency. There is always a fear of subtle retaliation if someone challenges supervisor’s way of thinking.”²⁸⁷

- **Favoritism.** Favoritism was identified in OPM’s analyses as another concern common among FDIC employees. In 2013, OPM’s analysis noted that “the culture at FDIC permits discrimination and in-group favoritism in relation to promotions, management support, availability of resources, and job assignments. There is a perception that leaders often play favorites.”²⁸⁸ The 2014 OPM analysis again noted that “[t]here is a perception that leaders often play favorites.”²⁸⁹ In 2016, the comments noted that “consistent with previous years, many respondents accuse supervisors and managers of giving high performance ratings, promotions, support, resources and special job assignments to their personal favorites. Furthermore, they feel as though this behavior is allowed by the culture at FDIC even though it should be monitored to ensure that the agency rewards are based on merit.”²⁹⁰ In 2016, an employee from ██████ commented “it’s very discouraging when you see the favoritism, politics, and [cliques] that are a major factor at the FDIC. I have worked for other federal agencies..., and have never seen so much wrongdoing when it comes to job advancement.”²⁹¹ In 2017, an employee from ██████ commented “Individuals [should] be hired for permanent positions based on knowledge and experience—not favoritism.”²⁹² In 2018, an employee from ██████ commented “I see promotions based on favoritism or daily

²⁸⁴ *FEVS Comment Analysis 4* (2016); *FEVS Comment Analysis 3* (2015).

²⁸⁵ *FEVS Comment Analysis 6* (2015).

²⁸⁶ *FEVS Comments Spreadsheet* (2018).

²⁸⁷ *FEVS Comments Spreadsheet* (2022).

²⁸⁸ *FEVS Comment Analysis 15* (2013).

²⁸⁹ *FEVS Comment Analysis 6* (2014).

²⁹⁰ *FEVS Comment Analysis 5* (2016).

²⁹¹ *FEVS Comments Spreadsheet* (2016).

²⁹² *FEVS Comments Spreadsheet* (2017).

working relationships that do not reflect the necessary ability...to do the work required.”²⁹³

- **Discrimination.** Comments over the years also raised issues relating to discrimination based on race, gender, and age. In 2013, the OPM analysis explained that “[e]mployees felt the culture at FDIC permits discrimination and in-group favoritism in relation to promotions, management support, availability of resources, and job assignments.”²⁹⁴ Another employee in [REDACTED] commented in 2017, “[t]here is also a subtle and not-so-subtle bias against women at the FDIC...and particularly against women who speak out or dare to ask questions.”²⁹⁵

The 2017 OPM analysis showed that 21 out of 95 comments regarding fairness and equal opportunity listed “gender, racial, or age biases as the limiting factors for career advancement at the agency.”²⁹⁶ OPM’s 2019 analysis explained that 12 out of 83 FEVS commenters on fairness and diversity “mentioned feeling treated unfairly or discriminated against at the FDIC” and 28 out of 83 commenters stated “hiring and promotion practices are unfair and not based on merits.”²⁹⁷

In 2016, an employee commented “End the ‘good old boy’ network so that discrimination can end.” In the same year, an employee from [REDACTED] commented that the “old boys” network at the FDIC needed to be addressed. “These people are entrenched and oppose any productive change... These people are not only tolerated, but encouraged by senior managements, and they frequently resort to intransigence or bullying to get their way.”²⁹⁸ In 2019, an employee commented that their [REDACTED] had a “good ole boys club where all the [B]lack examiners are warned just to ‘take’ the disrespect they will encounter from [supervisory examiners] in the office and on bank exams. Drinking to cope with travel and out-of-touch supervisors is encouraged and bragged about by [supervisor examiners] and examiners alike.”²⁹⁹ Another employee commented in 2021 that a “good old boy” network existed and “racism is still prevalent [and] should be greatly diminished.”³⁰⁰

- **Lack of Diversity.** In 2016, OPM analyses documents stated, “[r]espondents felt that the agency does not do enough to promote diversity within leadership. Comments indicated many employees felt the demographic composition of FDIC leadership is misaligned with the rest of the FDIC workforce and

²⁹³ FEVS Comments Spreadsheet (2018).

²⁹⁴ FEVS Comment Analysis 15 (2013).

²⁹⁵ FEVS Comments Spreadsheet (2017).

²⁹⁶ FEVS High Level Comment Summary 1 (2017).

²⁹⁷ FEVS High Level Comment Summary 1 (2019).

²⁹⁸ FEVS Comments Spreadsheet (2016).

²⁹⁹ FEVS Comments Spreadsheet (2019).

³⁰⁰ FEVS Comments Spreadsheet (2021).

surrounding communities, with minorities and [women] being severely under-represented in management positions. They stated [the] FDIC could do more in supporting the development of minority and [women] employees to better prepare them to meet the demands of serving in leadership positions.”³⁰¹ In 2016, an employee in ██████████ commented that they wanted “more opportunities for women in leadership positions” and that the “agency has staffed certain groups predominately with older white men.” An employee in the ██████████ field office commented in 2016, “hire more women and minorities.”³⁰² An employee from ██████████ commented in 2019, “please increase diversity in our workforce[.] [T]he FDIC is too homogenous.”³⁰³ An employee working out of ██████████ commented in 2021: “Do more at the executive level to include women and minorit[ies] in the workplace. Lots of conversation is happening, but no real action.”³⁰⁴ In 2022, an employee from ██████████ commented, “it would be beneficial to consider pursuing more diversity in the senior management of CISR (e.g., greater representation of women and minorities). It seems to be almost exclusively white male.”³⁰⁵ In 2023, an employee from ██████████ commented: “Increase the diversity in a meaningful way within the Senior Leadership team.” Another employee from ██████████ commented: “[T]he Chairman just does not care about the DEI issues...[A]ll senior managers know that diversity stops at grade 14. It comes from the top, and they keep talking about the DEI issues as if they care, but in reality, they do not.”³⁰⁶

Over the years, there were some comments from employees that the agency “overemphasized diversity” and that diversity was emphasized “at the expense of merit and skill level.”³⁰⁷

- **Lack of Accountability.** Some comments expressed concern that employees who performed poorly or acted unethically were not held accountable for their actions. The 2015 OPM analysis noted that “several respondents expressed a concern that poor performance is not effectively dealt with in a timely manner or not at all in many cases. Managers are not willing to take the steps to deal with poor performers. When managers do take the necessary steps to deal with extreme cases they do not feel that they are supported by HR, even when performance concerns are well documented.”³⁰⁸ The 2016 OPM analysis showed “a number of respondents felt that senior leaders are behaving unethically, and point to examples of hostile work environments, favoritism, retaliation, and dishonesty. Many commented on specific leaders that have

³⁰¹ FEVS Comment Analysis 5 (2016).

³⁰² FEVS Comments Spreadsheet (2016).

³⁰³ FEVS Comments Spreadsheet (2019).

³⁰⁴ FEVS Comments Spreadsheet (2021).

³⁰⁵ FEVS Comments Spreadsheet (2022).

³⁰⁶ FEVS Comments Spreadsheet (2023).

³⁰⁷ FEVS Comment Analysis 5 (2016).

³⁰⁸ FEVS Comment Analysis 11 (2014).

displayed a poor history of management skills and ethical behavior but faced no repercussions and are still in leadership positions.”³⁰⁹

In 2016, an employee from ██████ commented, “Greater accountability for managers for prohibited personnel practices, violations of law, violation of rights, up to and including firing them.”³¹⁰ In 2019, an employee in ██████ commented: “Stop supporting environments where people who have caused harm to others are promoted, and those that receive the harm are told they may have to be moved/relocated.” In 2019, an employee from ██████ commented, “[p]lease make managers more accountable for their actions, seems like some there are different rules for different people.”³¹¹

- **Risk Averse and Insular Culture.** In 2013, OPM’s analysis noted that “FDIC was often viewed as “rigid and closed to new and/or creative ideas or suggestions.”³¹² In 2015, OPM’s analysis noted that “there is still a perception that FDIC is very risk averse and this can result in leaders who are afraid or unable to make decisions for fear of the ramifications.”³¹³ In 2016, OPM’s analysis stated that “there is still a perception that FDIC is very risk averse and this can result in leaders who are afraid or unable to make decisions for fear of the ramifications.”³¹⁴

It is worth noting that the comments in the 2022 and 2023 FEV surveys—a time during which favorability ratings fell dramatically—did indicate that the FDIC’s post-COVID telework policy was a particular point of dissatisfaction among employees.³¹⁵ While 90% of employees held a favorable view of the FDIC’s telework program in 2021 (when the FDIC required employees to work remotely),³¹⁶ this rate dropped significantly to 52% in 2022 and 46% in 2023.³¹⁷ Many FDIC employees left comments in the 2022 and 2023 FEV surveys criticizing the return to office policies and how they impacted the FDIC’s culture, and these made up the majority of the criticisms in the 2023 results.³¹⁸

³⁰⁹ FEVS Comment Analysis 7 (2016).

³¹⁰ FEVS Comments Spreadsheet (2016).

³¹¹ FEVS Comments Spreadsheet (2019).

³¹² FEVS Comment Analysis 15 (2013).

³¹³ FEVS Comment Analysis 9 (2015).

³¹⁴ FEVS Comment Analysis 8 (2016).

³¹⁵ FEVS Comments Spreadsheet (2023); FEVS Comments Spreadsheet (2022).

³¹⁶ OPM, FDIC 2021 OPM Federal Employee Viewpoint Survey Results 16 (Feb. 2022); 2021 ANNUAL REPORT 13 (2021), <https://www.fdic.gov/about/financial-reports/reports/2021annualreport/ar21covid.pdf>.

³¹⁷ OPM, FDIC 2023 OPM Federal Employee Viewpoint Survey Results 5 (Dec. 2023); OPM, FDIC 2022 OPM Federal Employee Viewpoint Survey Results 13 (Dec. 2022).

³¹⁸ FEVS Comments Spreadsheet (2023); FEVS Comments Spreadsheet (2022).

II. Initiatives Relating to Workplace Culture

A. 2008 Culture Change Initiative

In 2008, under then-Chair Sheila Bair, a council (“Council”) was formed to identify actions necessary to “achieve the desired culture change” for the FDIC as part of a “Culture Change Strategic Plan” (“Culture Change Initiative”).³¹⁹ The initiative was implemented following a 2007 employment engagement survey conducted by an outside party noting that while “employees like the work they do, believe in the mission of the FDIC, and enjoy great benefits, pay, and facilities,” “several aspects of the culture and workplace environment hinder employees’ ability to be successful in their jobs and contribution to the fullest extent in achieving the FDIC’s mission.” The survey results indicated that the FDIC culture was task-oriented, such that technical skills were valued more than management and development of employees.³²⁰ Employees felt they were not “managed,” but instead “controlled.” In addition, there were observations that “parts of the organization are mean spirited.”³²¹

The Council worked over several months, including by interviewing and consulting with employees, conducting research and consulting with experts, ultimately preparing in September 2008, a report of its findings and recommendations. In its report, the Council identified a number of issues with the FDIC’s culture at the time, divided into three categories: communication, empowerment, and leadership. First, with respect to “communication,” the Council noted that the communication culture is “top-down, formal, and lacking sufficient explanations,” where “honesty and forthrightness is lacking.” They further noted that communication of “bad news” was “met with blame and recrimination.” Second, the Council’s report stated that the “empowerment culture” at the FDIC reflected a “lack of trust” in employees, with too many “layers of reviews and approvals.” The “decision-making processes also have the effect of stifling creativity and innovation” in the agency. Third, with respect to “leadership,” the report noted that the “current leadership culture” placed a “premium on technical skills” and paid “too little attention to, and less frequently reward[ed], leadership and management competencies.”³²²

In response to these findings, the Council identified goals for a “desired FDIC culture,” including (a) a culture where FDIC employees communicated with respect and kindness; (b) a culture that trusted employees to exercise “sound judgment;” and (c) a culture where leaders foster “trust and mutual respect” with employees and “model behaviors that demonstrate” the FDIC’s “core values.” In pursuit of the goals they desired, the Council recommended a number of changes and improvements, including ways to help: (1) develop leadership culture, behaviors, and competencies, for example through “trust” training for managers and incorporating supervisory assessment feedback; (2) improve communications

³¹⁹ We received documents relating to the Culture Change Initiative from Division of Administration (“DOA”), including promotional materials and briefing materials regarding the accomplishments of the initiative.

³²⁰ CULTURE CHANGE COUNCIL, CULTURE CHANGE STRATEGIC PLAN 1-9 (2008), <https://www.ignet.gov/sites/default/files/files/CCIStrategicPlan.pdf.pdf>.

³²¹ Email re: Follow-Up on Town Hall Meeting discussing the 2007 FEVS Results (Mar. 5, 2008).

³²² CULTURE CHANGE COUNCIL, CULTURE CHANGE STRATEGIC PLAN 7-10 (2008), <https://www.ignet.gov/sites/default/files/files/CCIStrategicPlan.pdf.pdf>.

upward and downward; (3) develop a leadership curriculum and training; (4) create a culture that values creativity and innovation, as well as accepts reasonable risk-taking; and (5) develop an effective management succession system that attracts, rewards, and retains good leaders.³²³

The Culture Change Initiative also spawned several other initiatives and changes including the following:

- **Internal Ombudsman.** A pilot Internal Ombudsman program was initiated in 2008 as part of the Culture Change Initiative to provide “another avenue for following up on employee issues.”³²⁴ The Office of the Internal Ombudsman was made permanent after the pilot program and continues to serve this function to this day.³²⁵
- **Performance Management and Recognition Programs.** In 2010, the FDIC initiated a new program that revised annual performance evaluations to include “accomplishment of results and demonstration of leadership behaviors. The leadership behaviors are aligned with FDIC’s desired corporate culture and impact...leaders’ pay and bonuses.”³²⁶
- **Revised Pay Policies.** In 2009, the FDIC “worked with the National Treasury Employees’ Union to develop a new pay-for-performance system that was perceived to be more transparent and fair to employees.”³²⁷
- **Trust Trainings.** The Culture Change Initiative also “delivered training to its Corporate Managers on trust. It offered leadership enrichment activities that provided continual learning.”³²⁸
- **Anonymous Mailbox.** The Culture Change Initiative also created a mailbox that allowed employees to submit questions or express concerns or issues anonymously.³²⁹ The FDIC now has division-specific “Open Exchange” portals that permit employees to submit comments anonymously.³³⁰

³²³ CULTURE CHANGE COUNCIL, CULTURE CHANGE STRATEGIC PLAN 9-10, 14-31 (2008), <https://www.ignet.gov/sites/default/files/files/CCIStrategicPlan.pdf.pdf>.

³²⁴ 2009 ANNUAL REPORT 49 (2009), <https://www.fdic.gov/about/financial-reports/reports/2009annualreport/AR09final.pdf>.

³²⁵ Witness 583.

³²⁶ DOA, *Culture Change Briefing, Appendix A: Progress Report on Culture Change Goal 1*, 7 (May 2013).

³²⁷ 2009 ANNUAL REPORT 49 (2009), <https://www.fdic.gov/about/financial-reports/reports/2009annualreport/AR09final.pdf>.

³²⁸ 2011 ANNUAL REPORT 5 (2011), <https://www.fdic.gov/about/financial-reports/reports/2011annualreport/AR11final.pdf>; 2009 ANNUAL REPORT 49 (2009), <https://www.fdic.gov/about/financial-reports/reports/2009annualreport/AR09final.pdf>; DOA, *Culture Change Briefing, Appendix A: Progress Report on Culture Change Goal 1*, 5 (May 2013).

³²⁹ DOA, *Culture Change Briefing, Appendix A: Progress Report on Culture Change Goal 1* (May 2013).

³³⁰ Witness 583.

- **Division of Administration Administrative Career Enhancement (“ACE”) Pilot Program.** The ACE program provided “developmental opportunities and upward mobility for administrative support staff” after surveys and comments showed “employees saw a need for additional career development and advancement opportunities.”³³¹ Four individuals out of over “100 applicants” participated in the pilot program in 2011.³³²

B. Workplace Excellence Program and Transparency, Empowerment, Accountability, and Mission FDIC

The Workplace Excellence Program (“WEP”)³³³ was initiated in 2012 “as a successor program to the Culture Change Initiative to provide a diverse forum where employees...could share their perspectives on the FDIC work environment, and collaborate on workplace improvements.”³³⁴ The program was composed of a national Workplace Excellence “Steering Committee” and councils for individual divisions and offices at the FDIC.³³⁵ The program was developed and implemented by the Office of the Internal Ombudsman.³³⁶ The Steering Committee and councils focused on “maintaining, enhancing, and institutionalizing a positive workplace environment throughout the agency,” and were formed by bargaining unit and non-bargaining unit employees across geographic locations and grade levels.³³⁷ While the program was operating, the Steering Committee and councils met at least quarterly and relied on FEV survey results to identify “potential areas of focus” for the program. The Steering Committee and councils would then develop “action plans” setting forth “measurable objectives” and tracking “ongoing progress.” Councils would provide progress updates on key “focus area initiatives” to the Steering Committee and then-Chairman Gruenberg prior to each Steering Committee quarterly meeting. The Chairman would also attend “a portion” of the quarterly meetings to receive “updates on Steering Committee and [council] initiatives and engage in dialogue with [Workplace Excellence] members.”³³⁸

From time to time, the WEP worked with the Office of the Internal Ombudsman or OMWI to conduct focus groups and review survey results, including FEV surveys. Some

³³¹ DOA, *Culture Change Briefing, Appendix B: A View to the Future* 1 (May 2013).

³³² *Memorandum to Executive CDAC* re: Responses to CDAC 2012 National Issues 5-6 (June 25, 2012).

³³³ We received documents relating to the WEP from the Office of the Internal Ombudsman, including “Agreed Upon Meeting Results” memorializing WEP meetings; operating and process documents; and documents memorializing WEP accomplishments.

³³⁴ *Workplace Excellence Program Evaluation: 2013-2017* 3 (Feb. 2024); 2011 ANNUAL REPORT 5 (2011), <https://www.fdic.gov/about/financial-reports/reports/2011annualreport/AR11final.pdf>; 2012 ANNUAL REPORT 38 (2012) (“The new Workplace Excellence (WE) Program builds upon the success of the Culture Change Initiative by institutionalizing a National WE Steering Committee and separate Division/Office WE Councils.”), <https://www.fdic.gov/about/financial-reports/reports/2012annualreport/AR12final.pdf>.

³³⁵ *Workplace Excellence Steering Committee Operating Processes Document* 1 (undated); *Workplace Excellence Program Evaluation: 2013-2017* 6 (undated).

³³⁶ *Workplace Excellence Program Evaluation: 2013-2017* 6 (undated).

³³⁷ SECTION 342 DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT REPORT TO CONGRESS 4 (2016), <https://www.fdic.gov/about/diversity/pdf/rte-3-22-17.pdf>; *Workplace Excellence Program Evaluation: 2013-2017* 3 (undated).

³³⁸ *Workplace Excellence Program Evaluation: 2013-2017* 3-20 (undated).

themes identified by the WEP included a culture of a fear of retaliation, discrimination and lack of diversity, and lack of accountability (as noted above in the discussions about FEV surveys).³³⁹

Although the WEP reviews continued to identify some of these persistent cultural issues, the WEP found improvement from 2013 to 2017, as it noted in a report prepared in 2018. The report found that the FDIC had achieved “significant improvements” from FEVS results compared to 2013, and maintained “high scores” for “Mission Strategy” and “Overall Satisfaction.” The categories that “dropped” were “Leadership Overall” and “Resources.” The report found that nine out of eleven divisions and offices “demonstrated statistically significant increases in favorability” across multiple categories when comparing 2017 results to 2013 results. The WEP also undertook messaging efforts to “encourage employees” to complete the FEV survey, and its “combined efforts,” between 2013 and 2017 “led to a 17% increase in employee participation in the survey.”³⁴⁰

Between 2018 and 2022, under then-Chair Jelena McWilliams, the FDIC paused the WEP and replaced it with Transparency, Empowerment, Accountability, and Mission FDIC (“TEAM FDIC”) in 2019.³⁴¹ TEAM FDIC was an initiative that was led by an advisory group of nine employees and executives who identified short-term projects related to the FDIC’s workplace.³⁴² In 2020, the TEAM FDIC advisory group reviewed more than 100 employee project ideas, and selected 10 to implement. Three of those projects were completed in early 2020, focusing on enhancing the examination scheduling process, improving employee empowerment, and assisting employees with disabilities when they transition from one supervisor to another.³⁴³ As part of TEAM FDIC, efforts were made to solicit anonymous feedback from employees about areas to improve the FDIC. The “Get Engaged” and “We Want to Hear From You” initiatives allowed employees to submit their comments through a web-based portal housed under the Office of the Internal Ombudsman, and leave their name if desired.³⁴⁴

Upon Chairman Gruenberg’s reappointment, the WEP was reestablished in 2022 in an effort to re-engage FDIC employees based on lower employee satisfaction scores in

³³⁹ *Workplace Excellence FEVS and Exit Survey Presentation* 15 (2015); *CIOO WE Council Focus Groups: March to May 2017* 1-2 (2017); *CIOO Pulse Survey Results and Preliminary Focus Group Themes* 2, 18 (Mar. 2017); *Workplace Excellence Steering Committee Fairness Diversity and Inclusion Focus Group Presentation* 9 (2017).

³⁴⁰ *Workplace Excellence Program Evaluation: 2013-2017* 12, 31 (undated).

³⁴¹ 2021 ANNUAL PLAN 90 (2021), <https://www.fdic.gov/about/strategic-plans/performance/2021annualplan.pdf>; 2011 ANNUAL REPORT 5 (2011), <https://www.fdic.gov/about/financial-reports/reports/2011annualreport/ARI1final.pdf>.

³⁴² Witness 583; *DISABLED VETERANS AFFIRMATIVE ACTION PROGRAM 2019 ACCOMPLISHMENT REPORT* 3 (2019), <https://www.fdic.gov/about/diversity/pdf/fy2019md715.pdf>.

³⁴³ 2021 ANNUAL PLAN 90 (2021), <https://www.fdic.gov/about/strategic-plans/performance/2021annualplan.pdf>; 2011 ANNUAL REPORT 5 (2011), <https://www.fdic.gov/about/financial-reports/reports/2011annualreport/ARI1final.pdf>.

³⁴⁴ Witness 583.

the 2021 annual FEV survey.³⁴⁵ As compared to 2020, there was a 6% drop in the FDIC’s 2021 FEVS “Global Satisfaction Index,” which measures “employees’ satisfaction about four aspects of their work: their job, their pay, their organization, and whether they would recommend their organization as a good place to work.”³⁴⁶ Rather than a Steering Committee, the re-instituted WEP consists of division and office-specific councils and a Workplace Excellence “Leadership Committee” comprised of the co-chairs for each council, two designees of the Chair, and two designees of the National Treasury Employees Union (“NTEU”).³⁴⁷ The Leadership Committee held its inaugural meeting in April 2023, and is continuing to develop “workplace improvement action plans utilizing FEVS results and other relevant information” and build “collaboration across the agency.”³⁴⁸

III. Pulse Checks from the Internal Ombudsman

The FDIC’s Office of the Internal Ombudsman has conducted “pulse checks” in certain offices or divisions where a manager or employee(s) have raised complaints or concerns about the environment.³⁴⁹ The information from these pulse checks has been used to identify themes and make recommendations to assist management in resolving any issues within a particular office or division.³⁵⁰ The Internal Ombudsman has also administered pulse checks at the request of the WEP.³⁵¹ Between 2013 to 2023, approximately 40 pulse checks were conducted on issues relating to potential harassment, a hostile workplace environment, and discrimination. Included below are some examples of findings from pulse checks from divisions and offices where employees have repeatedly reported concerns.

For example, the Internal Ombudsman has conducted several pulse checks between 2016 and 2023 of the Office of Complex Financial Institutions (“OCFI”), which was later subsumed within the Division of Complex Institution Supervision and Resolution (“CISR”). In 2016, a pulse check of OCFI found that “there is a general sense of mistrust and employees are intimidated and fearful that their feedback/comments will be used against them.” The survey also found that employees felt the OCFI environment was “getting worse not better.”³⁵² In 2019 and 2023, a pulse check of a particular bank examination team within CISR found that some employees “do not believe that leadership responds to or addresses concerns raised about alleged bullying and disparaging language.”³⁵³ In 2020, CISR

³⁴⁵ 2022 ANNUAL REPORT 88 (2022), <https://www.fdic.gov/about/financial-reports/reports/2022annualreport/2022-arfinal.pdf>; 2011 ANNUAL REPORT 5 (2011), <https://www.fdic.gov/about/financial-reports/reports/2011annualreport/AR11final.pdf>.

³⁴⁶ OPM, *FDIC 2021 OPM Federal Employee Viewpoint Survey Results* 5 (Feb. 2022).

³⁴⁷ *Workplace Excellence Leadership Committee Agreed Upon Meeting Results* 1 (Apr. 2023); Witness 583.

³⁴⁸ *Workplace Excellence Leadership Committee Agreed Upon Meeting Results* 1 (Apr. 2023); Email re: Federal Employee Viewpoint Survey Results (Dec. 21, 2023).

³⁴⁹ We received documents relating to pulse checks from the Internal Ombudsman, including themes and recommendations from interviews with employees in particular divisions or offices.

³⁵⁰ Witness 583.

³⁵¹ See, e.g., *OCFI Pulse Survey Results Presentation* 2 (2016).

³⁵² *OCFI Pulse Survey Results* (2016).

³⁵³ *CISR Pulse Check* (Dec. 2019); *CISR Pulse Check* (Dec. 2023).

employees from another bank examination team reported that “morale is poor and there is a toxic work environment.”³⁵⁴

As another example, in 2019, a pulse check of the Legal Division found that a senior manager was observed “cursing, raising his voice or yelling, and pounding tables.” There was also a “perception that the workplace environment is hostile or toxic because other managers are being undermined by” the senior manager.³⁵⁵ In 2020, concerns were also raised regarding a lack of diversity in the FDIC’s Legal Division and potential discrimination relating to promotion decisions. Employees reported that a White woman was promoted over an LGBTQ woman of color and a White man was promoted over an LGBTQ woman, where both minority candidates had equal or more experience than the promoted candidates. Employees also raised that from 2018 to 2020, five available Executive Manager positions were filled by White male candidates. Employees reported being concerned about openly discussing this issue because of a fear of retaliation. One recommendation offered by an employee was to “stop the practice of hiring or promoting without interviewing any candidates and directly choosing one internal candidate.”³⁵⁶

In 2022, a pulse check was conducted at one Division of Risk Management Supervision field office after the NTEU and field office management distributed a survey to gather anonymous input on the field office’s culture, morale, and working conditions. The survey responses included that “the work environment is overall toxic” and that “toxic office management does not allow for a positive work environment. Playing favorites among employees is normal and bullying to the point that co-workers quit or move within the agency rather than endure the abusive behavior is routine.”³⁵⁷ Another response noted, “We are not respected or valued as employees... I love the work I do and strongly believe in the value of the agency to the American public. Unfortunately, the toxic office culture makes work a misery so much of the time.”³⁵⁸ The field office had involved NTEU, LERS, and even Corporate University before reaching out to the Office of the Internal Ombudsman to conduct a pulse check.³⁵⁹ The pulse check largely corroborated the survey results.³⁶⁰

IV. Reports Made by Employee Resource Groups and Chairman’s Diversity Advisory Councils to Management

A. Reports Made by Employee Resource Groups

Employee Resource Groups (“ERGs”) are groups within the FDIC that provide support and resources for FDIC employees.³⁶¹ The ERGs include the following groups:

³⁵⁴ *CISR Pulse Check* (Oct. 2020).

³⁵⁵ *Legal Division Pulse Check* (Nov. 2019).

³⁵⁶ *Legal Division Pulse Check* (Sept. 2020).

³⁵⁷ 2022 Field Office Survey Results at 4, 6.

³⁵⁸ 2022 Field Office Survey Results at 9.

³⁵⁹ Witness 414; Witness 703; Witness 583.

³⁶⁰ *CISR Pulse Check* (Dec. 2023).

³⁶¹ We received documents relating to ERGs from OMWI, including promotional and process documents, as well as presentations and reports to senior management.

Association of African American Professionals (“A3P”), Corporate Advocacy Network for Disability Opportunities (“CAN DO”), Heritage of Asian American Pacific Islanders (“HAAPI”), Hispanic Organization for Leadership and Advancement (“HOLA”), Networking Inclusion and Advancement for African-American Women (“NIA Women”), Partnership of Women in the Workplace (“POWW”), and PRIDE.³⁶² The ERGs have over the years, from time to time, met with and reported to management on issues employees in their groups are facing.

For example, in 2018, shortly after being appointed Chair, then-Chair Jelena McWilliams received an anonymous letter from Black FDIC employees regarding racial discrimination arising out of the FDIC’s hiring and promotion practices. The letter stated that Black employees were “afraid to speak out about the issues they are facing for fear of repercussions” due to the “culture at the FDIC.” The letter also stated that the 2001 Conanan Consent Decree (discussed in greater detail below) had required the FDIC to “create a new system for promotions and make job assignments which could maximize advancement potential.” The letter stated that after the Consent Decree expired in 2004 and the FDIC was no longer “being watched by the courts, it continues to discriminate in hiring and is circumventing the consent decree’s requirements and merit system principles.”³⁶³

The letter stated that the FDIC engaged in hiring and promotion practices such as “preselecting” non-Black employees for positions before those positions were announced; placing non-Black employees in “Expressions of Interest” which allow employees to gain experience for another position and potential hiring advantages; moving non-Black employees into “new or vacant positions without any competitive process at all;” and providing Black employees with “lower performance ratings” to justify lower salaries and lack of promotions and trainings.³⁶⁴

In response to the letter, OMWI and other FDIC senior leaders met with two ERGs, the A3P and the NIA Women, to discuss the anonymous letter and proposed next steps to address the issues raised in the letter.³⁶⁵ During these meetings, the ERGs noted that the issues have persisted since the 2001 Consent Decree, and the FDIC’s attempts to address these concerns in the past had not worked. Some recommendations discussed during these meetings included: using metrics such as performance ratings, promotions, and Expressions of Interest to determine if there was a “selection bias” against Black employees; promoting a “Speak Up” campaign to “normalize talking about issues without the fear of retaliation;” and holding managers and executives “accountable by measuring behavior on their performance appraisals.”³⁶⁶

The A3P prepared and shared with OMWI a letter to then-Chair McWilliams outlining certain recommendations, including: (1) implementing 360-degree reviews to hold managers accountable for “creating and promoting an inclusive environment;” (2) including an

³⁶² EMPLOYEE RESOURCE GROUPS 1, <https://www.fdic.gov/about/diversity/pdf/erg-flyer-3.pdf>; Report, “Reporting and Handling of Allegations of Misconduct” Section.

³⁶³ Letter to Chair McWilliams re: African American FDIC employees 1-3 (Sept. 17, 2018).

³⁶⁴ Letter to Chair McWilliams re: African American FDIC employees 1-2 (Sept. 17, 2018).

³⁶⁵ *Meeting Notes* re: 2018 Letter 1 (Mar. 2019); *Meeting Notes* re: 2018 Letter 1 (Jan. 2019); *Meeting Notes* re: 2018 Letter 1 (Dec. 2018).

³⁶⁶ *Meeting Notes* re: 2018 Letter 1-2 (Dec. 2018).

“inclusive environment” as part of the FDIC’s annual “Performance Goals,” and comparing FDIC’s “status” in the 2000s and 2012 to 2019 to determine what obstacles have prevented FDIC from making progress, and develop a plan to overcome the obstacles; and (3) evaluating the FDIC’s culture and determining areas of improvement by analyzing Equal Employment Opportunity (“EEO”) complaints and evaluating 2018 FEV survey responses from Black employees.³⁶⁷

After receiving the 2018 anonymous letter, then-Chair McWilliams oversaw several new FDIC programs and initiatives aimed at improving diversity, including the following:

- **2019 Taskforce on Examiner Diversity.** The FDIC created an “executive level taskforce” to review demographic data from OMWI to identify challenges and recommendations to improve the FDIC’s “ability to attract, retain, and advance a diverse pool of examiner candidates.”³⁶⁸
- **2020-21 Pay Adjustment Program.** The FDIC consulted with “external compensation experts” and the NTEU to create a new pay setting program in 2020. In 2021, the FDIC also allowed FDIC employees “the opportunity to request a pay review and apply for a compensation review of their base pay.”³⁶⁹
- **2021 Revisions to Expressions of Interest Program.** The FDIC revised the Expressions of Interest Program requirements such that employees no longer needed approval from their supervisors in order to participate, and “selecting officials” were required to prioritize candidates who had “not recently been on temporary development assignment in the last 12-month period.”³⁷⁰ The FDIC stated these changes would expand career development opportunities to allow more employees to participate in the program.³⁷¹
- **2021 Rotational Special Assistant Program.** The FDIC designed a new Rotational Special Assistant Program to “increase diversity” in the workforce by providing participants the opportunity to serve as “Special Assistants to

³⁶⁷ Letter to Chair McWilliams from A3P re: Inclusive Environment for African American[s] 3-4 (undated).

³⁶⁸ ANNUAL EEO PROGRAM STATUS REPORT 7 (2019), <https://www.fdic.gov/about/diversity/pdf/fy2019md715.pdf>.

³⁶⁹ ANNUAL EEO PROGRAM STATUS REPORT 9 (2021), <https://www.fdic.gov/about/diversity/pdf/fy2021md715.pdf>; SECTION 342 DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT REPORT TO CONGRESS 11 (2021), <https://www.fdic.gov/about/diversity/pdf/rtc-4-1-22.pdf>.

³⁷⁰ ANNUAL EEO PROGRAM STATUS REPORT 9 (2021), <https://www.fdic.gov/about/diversity/pdf/fy2021md715.pdf>; SECTION 342 DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT REPORT TO CONGRESS 25 (2021), <https://www.fdic.gov/about/diversity/pdf/rtc-4-1-22.pdf>.

³⁷¹ SECTION 342 DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT REPORT TO CONGRESS 25 (2021), <https://www.fdic.gov/about/diversity/pdf/rtc-4-1-22.pdf>.

executives, specifically, Division Directors, Deputy Directors, and Regional Directors across the Corporation.”³⁷²

In 2021, the HAAPI group sent a letter to then-Chair McWilliams with “ideas to address the issues and concerns of the FDIC’s HAAPI community.” Some suggestions from HAAPI included that Asian American and Pacific Islander-specific issues be included routinely in “diversity dialogues” and addressed in “management training to increase sensitivity and awareness of microaggressions and more overt acts that harm” Asian American and Pacific Islander employees.³⁷³ Management prepared a response to the HAAPI letter agreeing to these suggestions and several others.³⁷⁴

In March 2023, the A3P prepared read-ahead materials for a meeting with Chairman Gruenberg that included a recommendation that OMWI work with the Division of Administration (“DOA”) to conduct a pay analysis of Black employees’ salaries to determine whether to implement a “pay equity plan.” The read-ahead materials noted that their contents would “not be presented” in the meeting with the Chairman.³⁷⁵

B. Reports Made by Chairman’s Diversity Advisory Councils to Management

The Chairman’s Diversity Advisory Councils (“CDACs”) provide advice to the FDIC Chairman through the Director of OMWI regarding diversity, equity, inclusion, and accessibility issues.³⁷⁶ Each FDIC region elects its own regional CDACs and chairs. The regional chairs collectively form the Executive Chairman’s Diversity Advisory Council (“CDAC”).³⁷⁷ Typically, the regional CDACs will determine what issues are affecting employees in their region, and the regional CDACs will meet to determine which of these issues are “national issues.”³⁷⁸ The CDAC presents “national issues” and recommendations on an annual basis to the Diversity and Inclusion Executive Advisory Council (“D&I Executive Advisory Council”), formed of division and office director-level members.³⁷⁹ After the D&I Executive Advisory Council is briefed, OMWI distributes the issues and recommendations to the “respective or affected” divisions and offices for “review and comment.”³⁸⁰ OMWI consolidates the management responses in a memorandum to the CDAC. The CDAC last reported to the D&I Executive Advisory Council and received a response in 2017. The CDAC

³⁷² ANNUAL EEO PROGRAM STATUS REPORT 25 (2021), <https://www.fdic.gov/about/diversity/pdf/fy2021md715.pdf>; SECTION 342 DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT REPORT TO CONGRESS 25 (2021), <https://www.fdic.gov/about/diversity/pdf/rtc-4-1-22.pdf>.

³⁷³ Letter to Chair McWilliams from HAAPI re: Initial Ideas to Address FDIC AAPI Issues 1 (May 2021).

³⁷⁴ *Memorandum to Chairman* re: HAAPI requests and response 1 (May 2021); Letter to HAAPI re: HAAPI requests 1 (undated).

³⁷⁵ *A3P Achievements and Activities Presentation* 1–6 (2022).

³⁷⁶ We received documents relating to CDACs from OMWI, including annual reports to management, responses from management, and promotional materials.

³⁷⁷ *Meeting Notes* re: Executive CDAC and Special Committee Issues 2 (Jan. 2024).

³⁷⁸ Witness 275.

³⁷⁹ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 46-47 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

³⁸⁰ *Memorandum to Executive CDAC* re: Responses to CDAC 2018 National Issues 1 (Nov. 1, 2018).

reported issues to the D&I Executive Advisory Council in 2018, but did not receive a response on the majority of issues presented. Since 2018, the CDAC has not presented to the D&I Executive Advisory Council and has only developed and presented issues to OMWI.³⁸¹

The CDAC has historically identified to senior management national issues relevant to the scope of this Report, including workplace bullying, fear of retaliation, and discrimination. Some of the specific issues and recommendations the CDAC has reported, including some responses from FDIC management, are included below:

Workplace Bullying. In 2017, the CDAC raised concerns to the D&I Executive Advisory Council about workplace bullying across several regions. Employees were concerned that workplace bullying not based on an individual’s protected class was not covered by the FDIC’s anti-harassment policies. In addition, even though anti-harassment policies and procedures could be used to address bullying based on protected class, the CDAC reported that this guidance was not “widely disseminated or consistently known.” The CDAC recommended exploring the issue further, disseminating information about FDIC policies and reporting mechanisms relating to workplace bullying, and proposing to add questions about bullying to the FEV survey. In response, management clarified that the FDIC’s Anti-Harassment Policy prohibited all forms of unwelcome misconduct, including bullying, regardless of whether the conduct is based on protected class. OMWI agreed to work with the CDACs and ERGs to engage in “open dialogue” about bullying and use internal publications to ensure employees understood FDIC’s anti-harassment policies.³⁸²

Fear of Retaliation. The CDAC has on multiple occasions reported to OMWI and the D&I Executive Advisory Council regarding a culture of fear of retaliation at the FDIC. In 2013, the CDAC presented to the D&I Executive Advisory Council that employees were concerned about providing feedback to supervisors due to “concerns of possible retribution.” The CDAC recommended implementing a 360-degree feedback program for managers using a confidential employee survey.³⁸³ Corporate University and DOA declined to use 360-degree feedback tools as part of the FDIC’s “performance appraisal system,” and did not recommend using the tool to “gather employee feedback on managers and then share that information with those managers’ supervisors.”³⁸⁴ DOA noted it supported the use of 360-degree reviews as part of “developmental programs,” and provided alternative resources for employees to report concerns regarding their manager’s behavior including: LERS, the Internal Ombudsman, second-line supervisors, or OMWI.³⁸⁵

In 2018, the CDAC reported to the D&I Executive Advisory Council that employees’ fear of retribution, and the “perception of being ostracized or retaliated against for sharing work-related concerns” could create an untrusting environment, as well as decreased morale and employee engagement. Employees reported they did not trust that surveys or focus groups would be completely confidential or anonymous, and did not trust that any concerns

³⁸¹ *Meeting Notes* re: Executive CDAC and Special Committee Issues 2 (Jan. 2024).

³⁸² *Memorandum to Executive CDAC* re: Responses to CDAC 2017 National Issues 10–11 (July 21, 2017).

³⁸³ *Memorandum* re: Executive CDAC 2013 National Issues 7 (Apr. 5, 2018).

³⁸⁴ *Memorandum to Executive CDAC* re: Responses to CDAC 2013 National Issues 4 (June 18, 2013).

³⁸⁵ *Memorandum to Executive CDAC* re: Responses to CDAC 2013 National Issues 4-5 (June 18, 2013).

raised would be addressed. “As a result, FDIC employees throughout the country have contacted the CDACs and expressed that they are hesitant, or even unwilling, to raise workplace issues with their supervisors and managers due to a fear of reprisal and the perception that raising the issues will negatively impact their jobs/careers.” The CDAC reported that employees in minority groups comprised the largest segment of those reporting a fear of retaliation. The CDAC recommended additional training, including in-person training, on the prevention of unlawful discrimination, retaliation, and harassment. In addition, the CDAC recommended developing a “Speak Up” campaign to encourage a “culture of respectful communication free of retaliation.”³⁸⁶ In response, management noted it would continue to provide existing trainings on the EEO complaint process and the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2022 (“No FEAR Act”) training on retaliation. OMWI agreed to coordinate with the DOA and other stakeholders regarding the “feasibility of establishing a ‘Speak Up’ campaign or otherwise addressing this issue.”³⁸⁷

Discrimination. The CDACs have also consistently reported to OMWI and the D&I Executive Advisory Council that women and minority employees at the FDIC experienced discrimination, including through lack of promotions or non-selection for career opportunities and unconscious bias in the workplace.

For example, in 2014, the CDAC reported to the D&I Executive Advisory Council that management “noted the lack of women applying” for Corporate Manager and Executive Manager positions within the regions.³⁸⁸ In response, management stated it would undertake a barrier analysis and stated that one of FDIC’s diversity objectives included conducting focus groups of employees to understand barriers to promotion and advancement of women and minorities.³⁸⁹ Similarly, in 2016, the CDAC reported that employees were concerned that minorities were being passed over for promotion despite having similar qualifications to non-minority candidates. The CDAC in the same year also noted that employees cited examples of “perceived pre-selection of candidates for open positions...before job announcements were posted.”³⁹⁰ The CDAC noted that the Office of Inspector General (“OIG”) had reported that the FDIC could do more to formalize and institutionalize recruiting, hiring and promotion processes to consider diversity, as well as measure outcomes. The CDAC also pointed to FEVS results that indicated there was a “fairly large difference” in favorable responses of Black and White employees regarding whether “promotions...are based on merit.” That gap was 7% in 2013, and increased to 10% in 2015. Similarly, when answering questions regarding “opportunities for career development other than promotions,” Black employees responded 6% less favorably than White employees in 2013, and the difference increased to 12% in 2015. The CDAC recommended management conduct barrier

³⁸⁶ *Memorandum re: Executive CDAC 2018 National Diversity and Inclusion Issues 4–5* (June. 27, 2018).

³⁸⁷ *Memorandum to Executive CDAC re: Responses to CDAC 2018 National Issues 2–3* (Nov. 1, 2018).

³⁸⁸ *Memorandum to Executive CDAC re: Responses to CDAC 2014 National Issues 1* (Oct. 2, 2014).

³⁸⁹ *Memorandum to Executive CDAC re: Responses to CDAC 2014 National Issues 1* (Oct. 2, 2014); SECTION 342 DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT REPORT TO CONGRESS 22 (2014), <https://www.fdic.gov/about/diversity/pdf/rtc-3-17-15.pdf> (The FDIC reported it was “actively examining senior grade level positions to better support equal access and remove barriers to the full inclusion of any identified groups.”).

³⁹⁰ *Memorandum to Executive CDAC re: Responses to CDAC 2016 National Issues 10* (Sept. 14, 2016).

analyses to address this issue. OMWI responded that it reviews statistical demographic data on an “ongoing basis,” and reviews “other available information, to determine whether barriers exist that may demonstrate inequities in FDIC personnel practices, to include promotions.” OMWI also stated that if they did not find barriers, they would work with CDACs and the WEP to understand “why the perception exists” and ways to address that perception.³⁹¹

In 2016 and 2017, the CDAC also noted an issue of a “perceived lack of inclusion,” and recommended addressing the impact of unconscious bias in the workplace.³⁹² In response, OMWI and Corporate University pointed to existing trainings on this issue. In 2016, they responded that “content on unconscious bias and inclusion” was “built into several leadership development course for both supervisors and employees, including all courses in the leadership core curriculum.” Corporate University also stated that Executive Managers and Corporate Managers must participate in a mandatory “half-day session” on unconscious bias and inclusion as part of their “EEO and Diversity Workshop for Supervisors” training. OMWI did note it was exploring additional opportunities to provide “D&I training” for employees.³⁹³ In 2017, management responded that Executive Managers and Corporate Managers were required to take unconscious bias trainings every two years. OMWI also noted it would continue to offer inclusion trainings to FDIC divisions and offices upon request.³⁹⁴

In 2018, the CDAC reported to the D&I Executive Advisory Council that employees from multiple regions expressed concerns about a lack of women and minority representation in FDIC senior leadership positions. The CDAC referred to EEO reports showing women made up approximately 44.9% of the permanent workforce, but only 39% of supervisors were women and only 35.6% of Executive Managers. In addition, minorities comprised 28% of the permanent workforce, 21.5% of CM-2 level supervisors, and 16.7% of Executive Managers. The CDAC recommended mentoring, coaching, and career development programs, as well as analysis of metrics to determine if disparities existed with respect to retention and succession management efforts.³⁹⁵ In response, management agreed to extend a mentoring program, and noted DOA and OMWI would continue its career advancement and succession planning efforts, and barrier analyses, noting the current programs underway.³⁹⁶

In 2018, the CDAC also reported that women examiners felt they were disproportionately given assignments in field offices that required additional travel, and were afraid to raise their concerns. The CDAC recommended that managers poll employees regarding travel preferences and conduct an analysis to determine whether assignments were being assigned in an unbiased manner. In response, management stated that RMS and the Division of Depositor and Consumer Protection (“DCP”) would not move forward with these recommendations until completion of a “complex analysis” of the composition of examination teams and “business considerations,” such as bank activity and risk profile and the skills and

³⁹¹ *Memorandum to Executive CDAC* re: Responses to CDAC 2016 National Issues 5–7 (Sept. 14, 2016).

³⁹² *Memorandum to Executive CDAC* re: Responses to CDAC 2017 National Issues 7 (July 21, 2017); *Memorandum to Executive CDAC* re: Responses to CDAC 2016 National Issues 8 (Sept. 14, 2016).

³⁹³ *Memorandum to Executive CDAC* re: Responses to CDAC 2016 National Issues 8–9 (Sept. 14, 2016).

³⁹⁴ *Memorandum to Executive CDAC* re: Responses to CDAC 2017 National Issues 7 (July 21, 2017).

³⁹⁵ *Memorandum* re: Executive CDAC 2018 National Diversity and Inclusion Issues 12 (June 27, 2018).

³⁹⁶ *Memorandum to Executive CDAC* re: Responses to CDAC 2018 National Issues 10–11 (Nov. 1, 2018).

experience of available staff. Management stated that once the analysis was complete, they would assess whether they needed to take additional action.³⁹⁷

In 2022, the CDAC reported to OMWI that in 2019 and 2020, the unfair treatment of women and minorities was a national issue.³⁹⁸ In a 2020 presentation, the CDAC noted that employees “reported that attempts to address the issue of bias with management have failed...the issue persists and disproportionately impacts minority and women employees.” The CDAC again recommended a “Speak Up” campaign to encourage a culture of “transparency and respectful communication free of retaliation” and requested that OMWI and Corporate University provide facilitators to the CDACs to continue conversations on these issues.³⁹⁹

V. Discrimination-Related Settlements

A. 2001 Conan Consent Decree Addressing Racial Discrimination

FDIC employees Chris J. Conan, Willitta Gordon Hawkins and Leonard Glenn first filed an EEO administrative complaint as class representatives against the FDIC in 1993, alleging that a class of Black FDIC employees had been “systematically denied opportunities for promotion and other selections because of their race.” They alleged that the FDIC maintained a system for making promotions that was excessively subjective and through which FDIC managers intentionally discriminated against Black employees by denying them the same opportunities for upward mobility that was afforded their White counterparts in violation of Title VII. For example, Plaintiff Conan alleged that despite his “exceptional qualifications and consistently high level performance,” he was repeatedly denied promotions in favor of less qualified White employees who were “groomed” and “preselected” for promotions by senior management. As part of the class action lawsuit, Mr. Conan sought declaratory, injunctive, and monetary relief on behalf of himself and other, similarly situated Black employees.⁴⁰⁰ In 2001, the plaintiffs voluntarily sought to dismiss their complaint and the FDIC entered into a consent decree (the “2001 Conan Consent Decree” or “Consent Decree”) to address the issues raised.⁴⁰¹

As part of the Consent Decree, the FDIC agreed to pay \$14 million plus interest to satisfy claims for back pay, front pay, employment benefits, and other forms of compensation. In addition, the FDIC agreed to provide certain forms of equitable relief, including:

- **Revising and implementing new practices and procedures for FDIC’s hiring and promotion process**, such as:
 - Retaining a third-party expert to assist in training and monitoring regarding developing job descriptions and identifying clusters of similar positions to

³⁹⁷ *Memorandum to Executive CDAC* re: Responses to CDAC 2018 National Issues 5–7 (Nov. 1, 2018).

³⁹⁸ *Memorandum* re: Executive CDAC 2019-2020 National Diversity and Inclusion Issues 12 (Apr. 28, 2022).

³⁹⁹ *CDAC Presentation 2019-2020 National Issues* 6 (undated).

⁴⁰⁰ *Conan v. Tanoue et. al*, No. 00-cv-3091 (D.D.C. 2000) (ECF No. 1).

⁴⁰¹ *Conan v. Tanoue et. al*, No. 00-cv-3091 (D.D.C. 2001) (ECF No. 28).

“ensure there is no tailoring or unnecessary modification made for purposes of pre-selection;”

- Providing employees rationales if it is determined that they are not qualified for a position;
 - Communicating to employees regarding “Career Development Plans” and surveying employees regarding the process and availability of such career enhancement tools; and
 - Including at least one panel member outside of the hiring division or office for interview panels.
- **Enhancing training and education** regarding interview techniques, EEO and diversity, and mentoring and employee development.
 - **Establishing a personnel compliance officer position** to monitor job analyses, position descriptions, vacancy announcements, and oversee plans for compliance and uniformity.⁴⁰²

The FDIC consented to a three-year period of oversight under the Consent Decree. After the end of this period, the FDIC decided to continue or modify some of the policies enacted under the Consent Decree, such as job description analyses, certain trainings and interview processes, as well as a formal mentoring program. The FDIC elected to end use of surveys regarding Career Development Plans and removed the personnel compliance officer position.⁴⁰³

B. 2013 Global Settlement Addressing Discriminatory Pay Programs

In 2013, the FDIC paid a \$2.9 million settlement to resolve all grievances brought by the NTEU claiming discrimination against bargaining unit employees who were Black and/or 40 and over, in connection with the “pay for performance” programs in place at the FDIC between 2004 and 2012.⁴⁰⁴ The NTEU had filed grievances alleging that under these programs, “the distribution of money...had a disparate impact on African-American employees and employees age 40 or over.”⁴⁰⁵ These programs were “the 2004 Corporate Success Award (“CSA”) program, the 2005 and 2006 Pay for Performance (“PFP”) programs, and the 2009, 2010, and 2011 Performance Management and Recognition (“PMR”) programs.”⁴⁰⁶ According to a 2007 Government Accountability Office report, the FDIC’s “pay for performance” system would place “nonexecutive/nonmanagers” into “one of four pay groups, based on an assessment of total performance and corporate contributions as compared with other employees in the same pay pool.” This program was “essentially comparative,” meaning employees were

⁴⁰² *Conanan v. Tanoue et. al*, 00-cv-3091 (D.D.C. 2001) (ECF No. 28).

⁴⁰³ *Post-Consent Decree HR Practices 1–5* (July 2005).

⁴⁰⁴ *CSA National Grievance – Global Settlement 2*, Attachment A, Attachment B (Feb. 2013).

⁴⁰⁵ *CSA National Grievance – Global Settlement 1* (Feb. 2013).

⁴⁰⁶ *CSA National Grievance – Global Settlement 1* (Feb. 2013).

rewarded based on a comparison to their peers. The Government Accountability Office report also stated that there were no “definitive descriptions or definitions of the performance levels for each of the three pay groups because employees are assessed compared to each other, not against fixed standards.”⁴⁰⁷

C. 2023 Settlement Relating to Discrimination Based on Race and Age

In September 2023, the FDIC paid approximately \$300,000 to Black employees and employees over 50 for denied bonuses and pay increases after the NTEU filed a series of grievances alleging violations of Title VII and the Age Discrimination in Employment Act.⁴⁰⁸ On March 27, 2020, the NTEU filed its first grievance related to this settlement. After receiving data on the distribution of bonuses to bargaining unit employees for the 2019 performance year, the NTEU found that “the distribution of ratings and associated pay increases demonstrate[d] a pattern and practice of illegal discrimination [against Black employees].” In addition to violating Title VII of the Civil Rights Act of 1964, the NTEU alleged that the FDIC also “violate[d] the requirements of Article 12, Section 7 Nationwide Agreement that performance evaluations be completed in a fair, objective and equitable manner.”⁴⁰⁹ On April 9, 2021, the NTEU filed its second grievance alleging a continued pattern of discrimination against Black employees with respect to 2020 bonuses. The NTEU also alleged that the FDIC discriminated against “older employees” during the 2020 cycle in violation of the Age Discrimination in Employment Act.⁴¹⁰ On March 21, 2022 NTEU filed its third grievance alleging continued discrimination against both Black and older employees with respect to 2021 bonuses.⁴¹¹ The September 2023 settlement compensated Black and older employees for all three bonus periods.⁴¹²

VI. Office of Inspector General Reports

There have been a number of OIG reports over the years that have touched on workplace culture issues, including in particular the OIG’s July 2020 report relating to sexual harassment. The OIG reports include the following.

A. Office of Inspector General’s 2014 Report on Senior Management Diversity

In March 2014, Congress requested that each Office of Inspector General review its respective agency’s “efforts to increase senior management diversity” after a 2013 Government Accountability Office report concluded that “management-level representation of minorities and women among the federal financial agencies had not changed substantially from

⁴⁰⁷ GOVERNMENT ACCOUNTABILITY OFFICE, AGENCIES HAVE IMPLEMENTED KEY PERFORMANCE MANAGEMENT PRACTICES, BUT OPPORTUNITIES FOR IMPROVEMENT EXIST 13 (2007), <https://www.gao.gov/assets/gao-07-678.pdf>; *CSA National Grievance – Global Settlement* Attachment A, Attachment B (Feb. 2013).

⁴⁰⁸ *FDIC/NTEU Settlement Agreement 1* (Sept. 2023); *NTEU Step 2 National Grievance Letter 1* (Mar. 2020); *NTEU Step 2 National Grievance Letter 1* (Mar. 2022).

⁴⁰⁹ *NTEU Step 2 National Grievance Letter 1* (Mar. 2020).

⁴¹⁰ *NTEU Step 2 National Grievance Letter 1* (Apr. 2021).

⁴¹¹ *NTEU Step 2 National Grievance Letter 1* (Mar. 2022).

⁴¹² *NTEU and FDIC Settlement Agreement 1* (Sept. 18, 2023).

2007 through 2011.” The OIG assessed the FDIC’s “agency personnel operations and other efforts to increase agency diversity, create a workplace free of systematic discrimination, and provide equal opportunity for minorities and women to obtain senior management positions.” As part of its review, the OIG analyzed several factors, including (1) demographic data, discrimination complaint activity, and employee satisfaction survey results; (2) the FDIC’s efforts to increase diversity; (3) OMWI’s role and involvement in “assessing the impact of FDIC’s personnel policies and efforts to increase diversity;” (4) FDIC policies and procedures “to understand controls to ensure fairness;” and (5) “factors that impact the FDIC’s ability to increase agency diversity at all grade levels, and particularly, in senior management.”⁴¹³

The OIG found that the FDIC’s initiatives and procedures “promote a workplace that is free of systematic discrimination,” but the FDIC needed to do more work to “increase representation of female employees, and to a larger extent, Hispanic employees throughout the agency and at the Executive Manager (EM) level.”⁴¹⁴

The OIG made recommendations to the FDIC, including:

- **Formalizing Recruiting Procedures and Methods to Measure the Success of Recruiting Efforts.** The OIG recommended that the FDIC engage in a more “formal and consistent” approach to targeted recruiting efforts to organizations focused on “female and minority populations,” including for example creating formal email lists of organizations to ensure “consistent and comprehensive outreach to diverse populations.” The OIG also recommended that the FDIC “formalize and measure the success of its recruitment efforts through professional and community organizations” in order to better “identify successful recruiting strategies, and identify areas for improvement.”⁴¹⁵
- **Tracking Demographics for Participants in Leadership Training Programs and Expressions of Interest Programs.** The OIG recommended that the FDIC track participation rates in career development and leadership training programs to determine if “there are areas where participation rates by certain groups are lacking” so the relevant executives could work with OMWI to address any issues. The OIG noted there were no written policies regarding the FDIC’s Expressions of Interest Program and that the FDIC did not track application or selection rates for this program, and recommended that the FDIC move forward with both.⁴¹⁶

⁴¹³ THE FDIC’S EFFORTS TO PROVIDE EQUAL OPPORTUNITY AND ACHIEVE SENIOR MANAGEMENT DIVERSITY 1, 11 (2014), <https://www.oversight.gov/sites/default/files/oig-reports/FDIC/15-001EV.pdf>.

⁴¹⁴ THE FDIC’S EFFORTS TO PROVIDE EQUAL OPPORTUNITY AND ACHIEVE SENIOR MANAGEMENT DIVERSITY 3 (2014), <https://www.oversight.gov/sites/default/files/oig-reports/FDIC/15-001EV.pdf>.

⁴¹⁵ THE FDIC’S EFFORTS TO PROVIDE EQUAL OPPORTUNITY AND ACHIEVE SENIOR MANAGEMENT DIVERSITY 21 (2014), <https://www.oversight.gov/sites/default/files/oig-reports/FDIC/15-001EV.pdf>.

⁴¹⁶ THE FDIC’S EFFORTS TO PROVIDE EQUAL OPPORTUNITY AND ACHIEVE SENIOR MANAGEMENT DIVERSITY 28 (2014), <https://www.oversight.gov/sites/default/files/oig-reports/FDIC/15-001EV.pdf>.

- **Analyzing Fairness and Consistency of Employee Performance Ratings.** The OIG recommended expanding the FDIC’s statistical analysis of performance ratings to ratings for supervisory employees as well, and expanding analysis to include “additional categories of data,” such as comparing ratings “agencywide and by grade level.”⁴¹⁷
- **Improving Integrity of Demographic-Related Data Reporting.** The OIG reviewed the FDIC’s reported EEO data and identified “several errors” in the FDIC’s 2011, 2012, and 2013 Fiscal Year reports, “which management attributed in part to a change in the way it computed the data.” The OIG recommended that the FDIC “enhance controls” to ensure the data from its EEO reports were accurate and reliable.

The FDIC agreed to implement the OIG’s recommendations and closed out the recommendations to the OIG’s satisfaction.⁴¹⁸

B. Office of Inspector General’s July 2020 Report on “Preventing and Addressing Sexual Harassment”

In July 2020, the OIG published a report entitled “Preventing and Addressing Sexual Harassment” (“OIG 2020 Sexual Harassment Report”).⁴¹⁹ The report set forth the conclusions from the OIG’s review conducted from July 2018 to June 2019. In its review, the OIG examined the FDIC’s policies and practices for reporting, handling, and resolving sexual harassment allegations; reviewed federal regulations, management directives, and best practices; interviewed FDIC personnel, including OMWI staff, Division of Administration’s Labor and Employee Relations Section (“LERS”) human resources specialists, legal staff, and the Internal Ombudsman; and conducted a survey of FDIC employees to understand their experiences with and understanding of sexual harassment and the FDIC’s reporting processes.⁴²⁰ In its report, the OIG concluded that “the FDIC had not established an adequate sexual harassment prevention program” and needed to “improve its policies, procedures, and training to facilitate the reporting of sexual harassment allegations and address reported allegations in a prompt and effective manner.”⁴²¹

In reaching its conclusion that the FDIC “had not established an adequate sexual harassment prevention program” and needed to make improvements, the OIG relied on its findings that: (1) “FDIC polices did not clearly define sexual harassment, include all avenues of reporting allegations of sexual harassment, or clearly describe the roles and responsibilities

⁴¹⁷ THE FDIC’S EFFORTS TO PROVIDE EQUAL OPPORTUNITY AND ACHIEVE SENIOR MANAGEMENT DIVERSITY 31 (2014), <https://www.oversight.gov/sites/default/files/oig-reports/FDIC/15-001EV.pdf>.

⁴¹⁸ THE FDIC’S EFFORTS TO PROVIDE EQUAL OPPORTUNITY AND ACHIEVE SENIOR MANAGEMENT DIVERSITY 43-44, 67-74 (2014), <https://www.oversight.gov/sites/default/files/oig-reports/FDIC/15-001EV.pdf>.

⁴¹⁹ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT (2020), <https://www.fdicogov.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴²⁰ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 1, 40-41 (2020), <https://www.fdicogov.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴²¹ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 11-12 (2020), <https://www.fdicogov.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

for preventing sexual harassment and monitoring allegations of such misconduct;” (2) the FDIC had not developed adequate procedures for tracking, investigating, reporting, and resolving misconduct allegations; (3) the FDIC had “not developed and implemented adequate procedures for applying disciplinary action in response to substantiated harassment allegations, including sexual harassment allegations;” and (4) the FDIC did not have “agency-specific program accountability or oversight practices, including performance goals, metrics, or surveys to determine its effectiveness in preventing and addressing sexual harassment allegations.”⁴²²

The OIG’s survey, conducted In March and April 2019, indicated that between January 2015 to April 2018, approximately 8% of the respondents (191 of 2,376) had experienced sexual harassment at the FDIC. While this rate fell below the Government-wide average from MSPB survey results showing 14%, the OIG noted that although 191 FDIC survey respondents reported experiencing sexual harassment, in the over four year period between January 2015 and April 2019, the FDIC had received only 12 sexual harassment reports, including formal EEO complaints and misconduct allegations. Significantly, the FDIC noted that “[t]his suggests there may have been underreporting of sexual harassment allegations.” In noting this apparent underreporting, the FDIC cited to its survey showing that 38% of the respondents who stated they had experienced sexual harassment said they did not report the incident for “fear of retaliation” and that 40% of all respondents “did not know, or were unsure, how to report” allegations of sexual harassment. And 44% of all respondents to the survey felt that the FDIC “should provide additional training on sexual harassment.”⁴²³

Among the specific findings in the report, the OIG included some of the following observations and corresponding recommendations:

- **Deficient Policies and Processes May Lead to Underreporting and Failure to Discipline Harassment.** The OIG found that the FDIC’s Anti-Harassment Policy did not clearly explain “sexual harassment,” did not clearly outline reporting mechanisms, and did not assure that “immediate, proportionate corrective action (discipline)” would be taken in response to harassment. The OIG noted that employees may not know what conduct constitutes sexual harassment and may not know how to report it, and noted their survey results supported this. In response, the OIG recommended enhancing the FDIC’s policies to better define what constitutes harassment and include examples articulated by the Equal Employment Opportunity Commission (“EEOC”), such as “unwelcome sexual advances, requests for sexual favors; and other verbal or physical harassment of a sexual nature.”⁴²⁴
- **Deficient Recordkeeping and Investigation Procedures May Lead to Inaccurate and Incomplete Data.** The OIG found the FDIC Division of

⁴²² FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT ii (2020), <https://www.fdicigoig.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴²³ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 17, 31 (2020), <https://www.fdicigoig.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴²⁴ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 14 (2020), <https://www.fdicigoig.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

Administration’s tracking of harassment allegations was “decentralized, untimely, incomplete, and inaccurate.” The OIG found the FDIC had difficulty providing a “comprehensive inventory of sexual harassment misconduct allegations the FDIC received” during the OIG’s evaluation period. The FDIC did not include unique identifiers to allegations that would allow tracking from “origination to resolution.” The system also did not track “processing timeframes” that would allow analysis of whether allegations were addressed promptly. In response, the OIG recommended that the FDIC “[d]evelop and implement a tracking system for sexual harassment misconduct allegations handled by the Anti-Harassment Program to ensure that relevant information is centralized, complete, accurate, and updated timely” as well as “[t]rack data elements for misconduct allegations, including original allegation date; misconduct classification; date investigation concluded; name of investigator; names of complainant, alleged harasser, and witnesses; whether the allegation was substantiated or unsubstantiated; and date of written notification to complainant and alleged harasser regarding completion of the investigation.”⁴²⁵

- **Lack of Formal Investigation Procedures May Lead to Inconsistency and Lack of Transparency.** The OIG noted in its report that the FDIC did not have written procedures for conducting interviews for harassment investigations. Certain offices also did not have a “timeliness” requirement for documenting interviews; accordingly some interview summaries were completed months after the interviews themselves. The OIG also found that the FDIC did not have procedures to memorialize when complainants and alleged harassers were notified of completed investigations. The OIG found that investigative files and personnel could not confirm that complainants or alleged harassers were notified of a completed investigation in several cases. In response, the OIG recommended that the FDIC “[d]evelop and implement procedures for investigating sexual harassment and misconduct allegations.” It also recommended that the FDIC “[e]nsure that appropriate officials notify both the complainant and alleged harasser in writing that the investigation has been completed, consistent with the Privacy Act and other legal requirements, and retain such written notifications within the official investigative file.”⁴²⁶
- **Lack of Procedures and Database for Disciplinary Actions May Lead to Inconsistency.** The OIG found that the FDIC had not clearly documented processes while making disciplinary decisions in certain cases and did not have a database of disciplinary actions. Without written procedures and a comprehensive database, the OIG cautioned the FDIC “risks taking inconsistent disciplinary actions for similar sexual harassment misconduct.” The OIG noted this could not only “undermine the confidence in the FDIC’s disciplinary system,” but also risk failing to “correct the underlying misconduct and deter

⁴²⁵ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 20-25 (2020), <https://www.fdicog.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴²⁶ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 23-25 (2020), <https://www.fdicog.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

recurrence.” In response, the OIG recommended developing procedures to ensure the FDIC was taking “consistent disciplinary actions for substantiated sexual harassment,” and suggested developing a “comprehensive, centralized database of disciplinary actions, including those associated with sexual harassment.”⁴²⁷

- **Sexual Harassment Trainings are Inconsistent and Inadequate.** Over half of survey respondents indicated they had not received or were uncertain if they had received sexual harassment training, and 40% of respondents indicated they did not know or were unsure of how to report sexual harassment. The OIG also found that some FDIC employees and supervisors did not “clearly understand what constitutes sexual harassment,” and accordingly made recommendations that training to prevent, identify, and report sexual harassment needed to be provided. The Anti-Harassment Policy did not specify the frequency of training for employees or supervisors and did not mandate attendance to anti-harassment trainings. In practice, FDIC also did not provide this training on an annual basis. While examples of sexual harassment were added to the FDIC’s No FEAR Act trainings, the OIG suggested anti-harassment trainings should be revised to include “a description of misconduct and the potential consequences that employees will face for engaging in unacceptable conduct.”⁴²⁸
- **Lack of Mechanisms Available to Determine Effectiveness of Anti-Harassment Program.** The OIG noted that senior leaders needed to appropriately oversee and evaluate the Anti-Harassment Program by reviewing policies, testing the complaint system to ensure complaints are received and addressed quickly, and ensure employees are aware of any changes to the Anti-Harassment Program. The OIG concluded the FDIC did not have oversight practices such as “performance goals, metrics, or surveys” to determine whether its Anti-Harassment Program is effective. It recommended conducting regular surveys to assess whether harassment in the workplace exists or is tolerated, partner with third parties to assess the program, or include metrics in performance plans to hold managers accountable for responding to harassment complaints.⁴²⁹
- **Policies Did Not Provide for Use of Alternative Disciplinary Actions.** The OIG also recommended updating policies to clearly describe potential disciplinary actions and include the option of alternative disciplinary action. As an example, the report noted the OPM recommends “last chance agreements” as a “best practice for an alternative to disciplinary action.” Such agreements note

⁴²⁷ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 26-27 (2020), <https://www.fdicigoig.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴²⁸ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 31-32 (2020), <https://www.fdicigoig.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴²⁹ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 34 (2020), <https://www.fdicigoig.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

that an employee will face disciplinary action if they do not meet the terms of the agreement or fail to correct inappropriate conduct.⁴³⁰

- **Leadership Did Not Reward Employees for Maintaining a Harassment-Free Culture.** The OIG stated that successfully preventing sexual harassment requires “clearly, frequently, and unequivocally stating that harassment is prohibited,” citing the EEOC “Promising Practices for Preventing Harassment.” It also found that the FDIC did not have a strategy, “such as through the use of performance review or rewards,” for acknowledging the “important roles of all employees, supervisors, and managers to make the FDIC’s workplace harassment-free.” The OIG recommended that the Chairman acknowledge employees for creating and maintaining a zero-tolerance culture where harassment complaints are promptly reported, investigated, and resolved.⁴³¹

Based on its findings, the OIG presented 15 recommendations for the FDIC to more effectively prevent and address sexual harassment. The 15 recommendations fell into four broad categories, including (1) improving policies and procedures related to responding to sexual harassment misconduct allegations; (2) promoting a culture in which sexual harassment is not tolerated and such allegations are investigated and resolved promptly; (3) ensuring consistent discipline; and (4) enhancing training for employees and supervisors.⁴³²

FDIC’s Response to OIG Report.

In the FDIC management’s response to the OIG 2020 Sexual Harassment Report, the FDIC disagreed with the conclusion that its Anti-Harassment Program was “inadequate,” noting that the Merit Systems Protection Board survey of FDIC employees from 2014 to 2016 showed 9% of FDIC employees reported experiencing sexual harassment, below the government average and one of the lowest percentages of those surveyed.⁴³³ The FDIC also disagreed with certain specific findings from the OIG, including the following:

- **Leadership and Accountability.** The FDIC responded that it had established a zero-tolerance culture against harassment where harassment is “promptly addressed,” contrary to the OIG’s findings. The FDIC pointed to practices reflecting management’s oversight and involvement on this issue, including annual notices from the Chair informing employees that the FDIC does not tolerate discrimination or harassment and “FDIC Performance Goals,” which included a milestone to enhance the Anti-Harassment Program. The OIG clarified in its response that its findings and recommendations were narrowly

⁴³⁰ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 16-17 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴³¹ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 12-13 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴³² FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT iii (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴³³ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 17, 35 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

focused on the lack of acknowledgment through “rewards or performance reviews” for creating a zero-tolerance culture.⁴³⁴

- **Comprehensive Anti-Harassment Program.** The FDIC stated its Anti-Harassment Program was adequate because it comported with EEOC regulations on sexual harassment (and noted the OIG had not concluded otherwise). The FDIC noted concerns regarding focusing exclusively on sexual harassment in policies, procedures, and trainings because it could “confuse” employees into “believing that it is the only form of objectionable workplace harassment.”⁴³⁵
- **Reporting of Sexual Harassment.** The FDIC also noted that the OIG improperly concluded the program was deficient because “only a relatively small percentage” of individuals who reported experiencing sexual harassment “actually pursued these allegations under the FDIC’s Anti-Harassment Program.” The FDIC noted that employees may not have reported issues because of a fear of retaliation, but this was not “necessarily due to a deficiency in the program itself.” Employees may also bring allegations to supervisors “so that they can be addressed through less formal means.” The OIG criticized this response because under the FDIC’s own policies, all allegations reported to supervisors should have been elevated to the Anti-Harassment Program Coordinator, who should then memorialize the complaints. The OIG’s findings showed the FDIC had only identified 12 reported allegations during its investigatory time period, even though 191 FDIC employees responded by survey that they had experienced sexual harassment during that same time period.⁴³⁶

Ultimately, the FDIC “concurred with 12 of the 15 recommendations” and developed and presented planned actions. With respect to 3 of the 15 recommendations, the FDIC only partially concurred and presented alternate responsive actions.⁴³⁷ Following discussions with the OIG, FDIC management agreed to take corrective action, including the following:

- Updating performance standards to hold supervisors accountable for “cultivating a culture in which harassment is not tolerated;”
- Updating the Anti-Harassment Policy to better define sexual harassment and identify key points of contact and their responsibilities;

⁴³⁴ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 36 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴³⁵ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 48 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴³⁶ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 37–38, 48 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴³⁷ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 39–39, 50 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

- Updating policies to include options for alternative discipline;
- Implementing a centralized case management system to track allegations of sexual harassment and disciplinary actions;
- Preparing an SOP that includes procedures for investigating allegations of misconduct, including sexual harassment;
- Notifying the complainant and subject when an investigation is complete, and keeping written records of notifications; and
- Developing employee and supervisor trainings, including identifying and reporting sexual harassment.⁴³⁸

Following the OIG Report, the FDIC implemented a plan to take the corrective actions it committed to take, as well as a timeframe by which to complete them.⁴³⁹ The FDIC periodically reported to the OIG regarding the status of implementation, and the OIG confirmed each of the 15 recommended actions was closed out “as of September 2021.”⁴⁴⁰

C. Office of Inspector General’s September 2021 Report on “The FDIC’s Management of Employee Talent”

In a 2021 evaluation of the FDIC, the OIG identified concerns regarding the FDIC’s “management of employee talent.” The OIG found that a high rate of FDIC employees and managers were eligible to retire and that this could lead to higher rates of manager turnover, resulting in “organizational knowledge and leadership gaps.” In addition, “high retention and low turnover in the workplace may hinder innovation, diversity, and productivity...and it may result in difficulty to implement change.”⁴⁴¹ The OIG also identified certain inadequacies in the FDIC’s strategies and procedures that could harm its ability to retain diverse employees, including the following.

The OIG reported that the FDIC did not have a consistent or comprehensive process to analyze retention-related data, and each division or office may analyze their own data independently. The OIG also reported that the FDIC’s online exit surveys were only used by 38% of employees who left the FDIC between 2013 and 2019.⁴⁴² The OIG noted its concern that the surveys did not provide the FDIC with the data needed to properly analyze retention trends. The OIG also suggested that the FDIC analyze other sources of data, such as

⁴³⁸ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 50–57 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴³⁹ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 58–59 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

⁴⁴⁰ OIG ENTRANCE CONFERENCE AGENDA, EVALUATION OF THE FDIC’S SEXUAL HARASSMENT PREVENTION PROGRAM (Dec. 13, 2023).

⁴⁴¹ REPORT ON THE FDIC’S MANAGEMENT OF EMPLOYEE TALENT 1-2 (2021), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/AEC-Memorandum-21-002.pdf>.

⁴⁴² REPORT ON THE FDIC’S MANAGEMENT OF EMPLOYEE TALENT 6 (2021), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/AEC-Memorandum-21-002.pdf>.

compensation data from the Division of Finance, demographic data from OMWI, or complaint-related information from the Office of the Internal Ombudsman, to identify additional information regarding departing employees.⁴⁴³

In response to the OIG, the FDIC agreed to revise its exit survey. The OIG noted this was not sufficient because it specifically recommended using “multiple data sources” to analyze retention trends.⁴⁴⁴ The FDIC ultimately revised its retention analysis processes to the satisfaction of OIG by June 2023.⁴⁴⁵

D. Office of Inspector General’s February 2023 Report on “Top Management and Performance Challenges Facing the FDIC”

In February 2023, the OIG issued its annual assessment of top management and performance challenges facing the FDIC, identifying nine top challenges, including “Managing Changes in the FDIC Workforce.” The report specifically identified that the FDIC is facing increasing resignation rates for its examiners-in-training, known as Financial Institution Specialists, with a doubling of Financial Institution Specialists resignations from 24 in 2020 to 54 in 2021, and a continued increase to 62 in 2022. The report notes that resignations are costly to the FDIC given the four years of training required between the time a Financial Institution Specialist is hired until that individual is commissioned. It also identifies the negative impact on the FDIC’s ability to succession plan and manage. The report does not go into any potential root causes of why the Financial Institution Specialists’ resignation rates appear to be increasing. However, the OIG does recommend that the FDIC establish better metrics or indicators to measure the effectiveness of the FDIC’s retention efforts, to better analyze trends in data.⁴⁴⁶

⁴⁴³ REPORT ON THE FDIC’S MANAGEMENT OF EMPLOYEE TALENT 7 (2021), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/AEC-Memorandum-21-002.pdf>.

⁴⁴⁴ REPORT ON THE FDIC’S MANAGEMENT OF EMPLOYEE TALENT 9, 14 (2021), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/AEC-Memorandum-21-002.pdf>.

⁴⁴⁵ *Memorandum re: FDIC’s Management of Employee Talent 1* (June 13, 2023).

⁴⁴⁶ REPORT ON TOP MANAGEMENT AND PERFORMANCE CHALLENGES FACING THE FDIC 1, 26 (2023), https://www.fdicigo.gov/sites/default/files/reports/2023-02/TMPC%20Final%20202-16-23_0.pdf.

FACTUAL FINDINGS

I. Context Around Factual Findings

Virtually all of the hundreds of FDIC employees we interviewed, whether through the hotline reporting process or through our affirmative outreach, shared a deep commitment to the agency and took great pride in its mission. Many reported enjoying extremely positive work experiences at the agency and most had created strong bonds with their colleagues. They were universally dismayed and saddened by what had been publicly reported recently about the FDIC. And those who had suffered from traumatic experiences of sexual harassment, discrimination, bullying, and other workplace misconduct—and bravely shared them with us, reliving painful events—expressed their hope and faith that doing so would help make the FDIC, an institution they care about, a better place. In reporting on some of the troubling aspects of the FDIC’s workplace culture and identifying ways in which the FDIC can improve, we should not lose sight of the positive experiences that FDIC employees have had and expressed, as well as the genuine affection they have expressed for the institution, its mission, and their colleagues. That is what, in fact, many reported motivated them in reaching out to us and providing their stories.

We received 485 reports to the hotline relating to the FDIC’s workplace culture. The allegations covered the period from the 1980s to the present. They included the following Divisions and Regions: Division of Administration, Division of Risk Management Supervision, Division of Depositor and Consumer Protection, Division of Complex Institution Supervision and Resolution, Division of Resolutions and Receiverships, Office of Minority and Women Inclusion, Division of Information Technology, Division of Insurance and Research, the Legal Division, Atlanta, Chicago, Dallas, Kansas City, New York, San Francisco, and the Washington, D.C. headquarters.

In addition, we conducted an additional 167 interviews of individuals, including current and former employees from various regions, divisions, functions, and employee groups, as well as a range of seniority. We have also reviewed thousands of documents, including relevant policies, procedures, initiatives, reports of investigation, and discipline and settlement-related documents. Based on our review of all of these sources, we summarize our factual findings below. Redactions have been made to certain descriptions in the public version of this Report to address the Privacy Act, preserve anonymity and respect due process rights.

II. Conduct of the Chairman

The public reporting in November 2023 that ultimately led to the creation of the Special Review Committee of the Board of Directors and the appointment of our firm to conduct an independent review included a *Wall Street Journal* article reporting on a 2008 incident during which Chairman Gruenberg, Vice-Chairman at the time, “berated a senior female official,” leading to an inquiry and report relating to the incident. The article also reported on his “reputation for bullying and for having an explosive temper.”⁴⁴⁷ We included

⁴⁴⁷ Rebecca Ballhaus, FDIC Chair, Known for Temper, Ignored Bad Behavior in Workplace, THE WALL STREET JOURNAL, Nov. 16, 2023.

this aspect of Chairman Gruenberg’s leadership of the FDIC in our review. As set forth in greater detail below, we find that Chairman Gruenberg does in fact have a reputation within the FDIC for a temper, and although many have not personally experienced the temper and noted that his manner is generally “low key” and “professional,”⁴⁴⁸ we did also learn of credible reports of outbursts, including over the last few years, some of which were corroborated by contemporaneous messages, where FDIC staff, including senior executives, have felt disrespected, disparaged, and treated unfairly.⁴⁴⁹ While not the root cause of the sexual harassment, discrimination, or other workplace misconduct impacting the agency as a whole, a number of people noted that tone and culture flows from the top down, and having a leader with a reputation of this type does create certain challenges in leading a cultural transformation that prioritizes a more positive workplace culture.

During the course of our review, a range of views about the Chairman emerged, and although not everyone agreed with any particular characterization, most of the credible accounts acknowledged that Chairman Gruenberg has a temper and can, at times, get visibly angry in meetings with FDIC staff. Many had either personally experienced or heard of the Chair’s reputation for having a “temper” or a “short fuse.”⁴⁵⁰ FDIC employees who have experienced and observed it describe Chairman Gruenberg, on these occasions, as being “aggressive,” “harsh,” “emotional,” “upset,” “unhappy,” “agitated,” “vitriol[ic],” “prosecutorial,” “disrespectful,” “intense,” “raising his voice,” or having a “short fuse.”⁴⁵¹ Although most did not want to—or feel comfortable—characterizing the behavior (as opposed to merely describing it) and others reported on their experiences with the Chairman only on the condition of anonymity, a number noted that the Chairman, on these occasions, had acted “unprofessionally,” “unreasonably,” and/or “inappropriately.”⁴⁵² Generally speaking, these incidents arose when people were delivering bad news to Chairman Gruenberg or in discussing matters about which he disagreed.⁴⁵³ Those situations can, as individuals reported, “get [Chairman Gruenberg] going,” and the Chair’s conduct does at times feel to those subject to it, directed specifically at those who are raising the topic, whether or not they are fairly to be blamed for it.⁴⁵⁴ As one former senior executive noted, he has a way of “shoot[ing] the messenger.”⁴⁵⁵ Another current senior executive described the Chair’s questioning style in moments of frustration as “put[ting] people on trial.”⁴⁵⁶ And although some noted that it ultimately did not prevent them from reporting issues, staffers did fret and regularly consulted each other over—and sometimes delayed—delivering news they feared will upset Chairman

⁴⁴⁸ Witness 324; Witness 296; Witness 495; Witness 247; Witness 669; Witness 362.

⁴⁴⁹ Microsoft Teams Chats (May 19, 2023); Microsoft Teams Chats (Nov. 5, 2020); Witness 459; Witness 566; Witness 613; Witness 502; *Report of Management Inquiry* 3–5 (May 2008).

⁴⁵⁰ Witness 599; Witness 658; Witness 207; Witness 371; Witness 255; Witness 548; Witness 489; Witness 235; Witness 296; Witness 294; Witness 379; Witness 656; Witness 544; Witness 405.

⁴⁵¹ Witness 352; Witness 548; Witness 207; Witness 296; Witness 502; Witness 255; Witness 544; Witness 235; Witness 566; Witness 462.

⁴⁵² Witness 502; Witness 362; Microsoft Teams Chat (May 19, 2023); Witness 566.

⁴⁵³ Witness 544; Witness 502; Witness 255; Witness 352; Witness 324; Witness 599.

⁴⁵⁴ Witness 459; Witness 566; Witness 235; Witness 502; Microsoft Teams Chat (Nov. 5, 2020); Witness 489.

⁴⁵⁵ Witness 374.

⁴⁵⁶ Witness 548.

Gruenberg.⁴⁵⁷ A number of people have themselves felt or observed others feeling uneasy or “on edge” when having to brief the Chairman.⁴⁵⁸ As one senior executive put it, there is “a great reluctance to deliver bad news to Marty Gruenberg,”⁴⁵⁹ and a number of employees, including senior executives, noted that his reactions could have the effect of “chilling” open conversations and that his behavior “hampers free flow of communication.”⁴⁶⁰

Not everyone we spoke with agreed that Chairman Gruenberg has a temper or that he has a reputation for one. Certain employees and direct reports, including those who have joined the FDIC more recently, indicated that they themselves have not experienced or even heard of any difficult or challenging interactions with Chairman Gruenberg.⁴⁶¹ Some people emphasized that he is “low key,” “soft spoken,” “not excitable,” “even keeled,” “respectful,” and “quiet.”⁴⁶² And although Chairman Gruenberg can have a “prosecutorial” style in which he asks questions in “rapid succession” and can speak with “intensity,” they described it simply as a reflection of his focus on and “passion” for the issues, as well as the level of his preparation in advance of meetings.⁴⁶³ If he raises his voice at all, some noted, it is from an already “low normal speaking voice” and is never yelling or screaming.⁴⁶⁴ In addition, others noted that Chairman Gruenberg has had to manage extremely difficult and stressful circumstances, including potentially catastrophic bank failures, and therefore, to the extent he had expressed some anger, frustration, or intensity, it was understandable and “fit for purpose.”⁴⁶⁵

Chairman Gruenberg himself, in our interview with him, stated that he does not recall ever getting angry or losing his temper with any FDIC employees. He acknowledged that he can get “frustrated” but said he always “maintains control” and that he can “speak with intensity at times, but not directed at a person,” and that he has never screamed or yelled. Other than the 2008 incident, reported in the *Wall Street Journal* article and described further below, Chairman Gruenberg also stated that he was not aware—nor was he ever informed about—anyone within the FDIC who felt that he had lost his temper or gotten angry with them at a meeting.⁴⁶⁶ The report created by a third party firm following the 2008 incident noted how certain witnesses in the meeting described a “verbal abuse and attack” where he was “leading, denigrating, angry,” “bombastic,” and “out of control.”⁴⁶⁷ It also noted that Chairman Gruenberg thought there was a “disconnect” between what the others had experienced and what he had done.⁴⁶⁸ He stated that he had the responsibility to “challenge staff and ask

⁴⁵⁷ Witness 544; Witness 247; Witness 296; Witness 471; Witness 699.

⁴⁵⁸ Witness 502; Witness 566; Microsoft Teams Chat (May 19, 2023); Witness 200.

⁴⁵⁹ Witness 296.

⁴⁶⁰ Witness 502; Witness 658; Witness 432; Witness 699.

⁴⁶¹ Witness 200; Witness 323; Witness 495; Witness 362; Witness 669; Witness 462.

⁴⁶² Witness 323; Witness 548; Witness 669; Witness 471; Witness 495; Witness 582; Witness 294; Witness 462; Witness 416.

⁴⁶³ Witness 462; Witness 352; Witness 502; Witness 324; Witness 362; Witness 255; Witness 207.

⁴⁶⁴ Witness 324; Witness 669; Witness 296; Witness 548; Witness 489.

⁴⁶⁵ Witness 599; Witness 471; Witness 324; Witness 247; Witness 672.

⁴⁶⁶ Interview of M. Gruenberg.

⁴⁶⁷ *Report of Management Inquiry* 1, 4, 9 (May 2008).

⁴⁶⁸ *Report of Management Inquiry* 5 (May 2008).

questions,” and that he always does so “in a respectful manner that is within the bounds of normal business behavior.”⁴⁶⁹ Chairman Gruenberg stated to us that he had not read the report of the 2008 incident until his 2022 confirmation process, but he continued to believe there was a “disconnect” between how he intended to act and how others had perceived him at that meeting. In our interview of him, Chairman Gruenberg noted that one participant at the meeting at the time described it differently than the others. He did recognize, however that because of his position as the Chairman, “what [he] say[s] and how it’s received can be two different things.”⁴⁷⁰

Our review has confirmed that—although not a routine occurrence—a number of FDIC employees, including senior leaders in the agency, have been subjects of and witnesses to extremely difficult and volatile interactions with Chairman Gruenberg, some of whom have left those interactions feeling unsettled, disturbed, and demeaned.⁴⁷¹ Even though certain of the incidents occurred many years ago, others are more recent. They were recounted to us by current FDIC executives and employees who still recalled the meetings vividly and remembered clearly how those interactions made them feel. They also almost universally felt uneasiness about describing these events and a number requested that we keep the descriptions of the incidents sufficiently generic so as not to make themselves easily identifiable. Some of the incidents involving Chairman Gruenberg we learned about in our review include the following:

- In or about 2007, certain FDIC employees briefed then Vice-Chairman Gruenberg on a matter that upset him. Although these particular employees had not been responsible for the problem, according to one witness, Mr. Gruenberg nonetheless got “furious” and “scream[ed] profanities” and questioned the employees’ competence and that of their entire Division for “nearly an hour.” It was the first time that this employee had seen Mr. Gruenberg “lose his cool,” and remembered feeling that the conduct had stepped across a line of professionalism. This employee noted, “you had to have a really tough skin if you want to work in that environment. It became known that it was Marty’s approach to bad news being delivered.” One of the participants in this meeting remains at the FDIC, serving in a senior role. The exchange with Mr. Gruenberg was sufficiently shocking and disturbing that it continues to impact this executive. “I’ll never forget the experience. In my entire career of 35 years, I’ve never had anybody treat me like that.”⁴⁷² Chairman Gruenberg did not recall any meeting of this type, and as noted above, claimed not to recall ever getting angry or losing his temper with anyone.⁴⁷³
- In 2008, as publicly reported, then-Vice-Chairman Gruenberg had an exchange with a senior executive that led to an inquiry and a report. According to the

⁴⁶⁹ *Report of Management Inquiry 7* (May 2008).

⁴⁷⁰ Interview of M. Gruenberg.

⁴⁷¹ *E.g.*, Witness 459; Witness 502; Witness 566; Microsoft Teams Chats (May 19, 2023); Microsoft Teams Chat (Nov. 5, 2020).

⁴⁷² Witness 459.

⁴⁷³ Interview of M. Gruenberg.

third-party report that was commissioned at the time after the incident had been raised with then-Chair Sheila Bair, at a quarterly Division of Administration (“DOA”) briefing, the topic of an annual leadership conference for FDIC managers came up that Mr. Gruenberg was unable to attend due to a scheduling conflict. The topic of conversation between Mr. Gruenberg and the senior executive related to the scheduling process and whether efforts were made to notify his office of the meeting date. Several participants recalled Mr. Gruenberg saying something along the lines of, “[y]ou don’t have any respect for me, for my office” and “[y]our actions are unprofessional, bloody outrageous.”⁴⁷⁴ Other individuals interviewed by the third-party firm also compared Mr. Gruenberg to a prosecutor examining a hostile witness, based on his tone, pointed language, and/or body language.⁴⁷⁵ The senior executive said she felt like she was being personally attacked, that she had been “embarrass[ed] and humiliate[ed]” by Mr. Gruenberg, and told him that he had created a “hostile environment.”⁴⁷⁶ Another participant in the meeting described what happened as a “verbal attack,” where Mr. Gruenberg was “red faced, jabbing his finger, leaning forward, bombastic, [and] out of control.”⁴⁷⁷ As described in the report, Mr. Gruenberg found the senior executive’s reaction to him to be surprising and he stated it was the first time anyone had ever reacted in this manner towards him.⁴⁷⁸ Another participant at the meeting described his behavior as “tough” but with a “controlled anger” and thought the senior executive’s reaction was “out of proportion.”⁴⁷⁹ Mr. Gruenberg stated that he apologized to the senior executive at the meeting when he realized that she was upset.⁴⁸⁰ The third-party report from the 2008 inquiry concluded that the “meeting [in question] became tense,” Mr. Gruenberg was “angry,” and that the anger “or at a minimum, displeasure” was communicated by him to the meeting participants.⁴⁸¹ The report additionally concluded that, based on interviews of other managers who were not at the meeting in question, it was “not the first time that Mr. Gruenberg was perceived as being angry (or displeased) or as communicating distrust or disrespect to others at meetings.”⁴⁸²

- In or about 2009, there was a particularly difficult briefing with Chairman Gruenberg, as an FDIC employee who had known Chairman Gruenberg for many years recalled. This individual, who ended up having a career of over 35 years at the FDIC, had briefed Chairman Gruenberg many times and knew that “he can get angry.” At this particular meeting in about 2009, when this employee raised an issue that Chairman Gruenberg disagreed with, he “chewed

⁴⁷⁴ *Report of Management Inquiry* 1, 6, 4, 9 (May 2008).

⁴⁷⁵ *Report of Management Inquiry* 4, 13, 15 (May 2008).

⁴⁷⁶ *Report of Management Inquiry* 1, 4–5 (May 2008).

⁴⁷⁷ *Report of Management Inquiry* 8–9 (May 2008).

⁴⁷⁸ *Report of Management Inquiry* 5–8 (May 2008).

⁴⁷⁹ *Report of Management Inquiry* 10–11 (May 2008).

⁴⁸⁰ *Report of Management Inquiry* 6 (May 2008).

⁴⁸¹ *Report of Management Inquiry* 16 (May 2008).

⁴⁸² *Report of Management Inquiry* 16 (May 2008).

[them] out” at the meeting and “threw the papers” that had been prepared “against a wall in anger.”⁴⁸³ When asked about it in our interview, Chairman Gruenberg denied ever throwing anything, including papers, during any meeting.⁴⁸⁴

- In November 2020, in the midst of the COVID pandemic, the FDIC oversaw a bank’s acquisition of a failing bank in Kansas. The officers of the acquiring bank refused to wear masks, and there was no mask mandate in Kansas at the time.⁴⁸⁵ The FDIC staff took a number of precautions in advance of the meeting, including limiting the number of individuals on site, quarantining, and testing, as well as setting up onsite air purification and sanitization, among other things.⁴⁸⁶ The closing took place successfully and without incident under difficult circumstances. A group of employees reported on this closing to then-FDIC Board member Gruenberg. Individuals who attended this virtual meeting reported to us that Mr. Gruenberg got upset about the closing having gone forward with unmasked participants, and “lost it” during this meeting.⁴⁸⁷ Certain participants noted, “the level of his voice escalated” and “for 10 minutes, he just yelled.”⁴⁸⁸ Another person said that he “was absolutely irate and attacked us.”⁴⁸⁹ At least one person stayed on camera “because [they were] used to being berated by Marty,” but another went off camera.⁴⁹⁰ Contemporaneous Teams messages among meeting participants corroborated how they perceived Mr. Gruenberg’s conduct. For example, one participant sent a Teams message during the meeting saying “[t]his is going very poorly ... [Martin Gruenberg] railing against us[.]” This participant added later “[t]his is a disaster. I might cry. ... I want to quit.”⁴⁹¹ This same person later sent an email to another FDIC employee saying “[j]ust ha[d] a horrible meeting with Marty” and a Teams message to yet another FDIC employee saying “I had a horrible meeting with [Martin Gruenberg] today. ... It was really awful and felt very personal.”⁴⁹² A different meeting participant said “[w]ow! I haven’t seen him that fired up in a long time.”⁴⁹³ The meeting was also described as “[v]ery very bad” and that Mr. Gruenberg was “hot.”⁴⁹⁴ When asked about it during our interview, Chairman Gruenberg could not recall this specific meeting, although he noted that he had a “vague” recollection of some details around a bank acquisition during the pandemic. Chairman Gruenberg did not remember

⁴⁸³ Witness 613.

⁴⁸⁴ Interview of M. Gruenberg.

⁴⁸⁵ Witness 502.

⁴⁸⁶ Witness 502.

⁴⁸⁷ Witness 682; Witness 502; Witness 669.

⁴⁸⁸ Witness 682; Witness 502.

⁴⁸⁹ Witness 669.

⁴⁹⁰ Witness 669.

⁴⁹¹ Microsoft Teams Chat (Nov. 5, 2020).

⁴⁹² Microsoft Teams Chat (Nov. 5, 2020); Email re: Meeting (Nov. 5, 2020).

⁴⁹³ Microsoft Teams Chat (Nov. 5, 2020).

⁴⁹⁴ Microsoft Teams Chat (Nov. 5, 2020).

“getting upset or angry” and he did not recall any of the meeting participants appearing disturbed or upset by his conduct.⁴⁹⁵

- In May 2023, there was a meeting that was intended to cover corporate governance-related regulations but Chairman Gruenberg switched topics and began to talk about bank failures. According to one of the participants in the meeting, Chairman Gruenberg then “went on a rant” for 45 minutes, directing his “ire” at a particular individual, and also threatened that he could “fire” or “reassign” anybody he wanted.⁴⁹⁶ One participant described it as “45 minutes of vitriol” where no one else could say anything.⁴⁹⁷ As part of our review, we obtained Teams message exchanges on that day that corroborated this account. The meeting was so uncomfortable that the person who felt targeted by Chairman Gruenberg sent Teams messages to the telephonic meeting participants (who had joined the meeting thinking that it would be about corporate governance regulations) telling them that they could “drop.”⁴⁹⁸ The individual also sent other contemporaneous Teams messages to other meeting participants describing Chairman Gruenberg’s conduct as “embarrassing and inappropriate,” saying “[I] will be demoted,” and stating “if we are going to go through this same thing every time we brief him, [I] am out.”⁴⁹⁹ Two participants described the meeting as “tough” and “inappropriate” in contemporaneous Teams messages.⁵⁰⁰ The contemporaneous Teams exchanges also corroborated that the meeting went on for a long period of time, approximately 45 minutes.⁵⁰¹ When asked about this meeting, Chairman Gruenberg had a general recollection of a meeting discussing these subjects, but stated that he does not recall getting upset or angry.⁵⁰²

Others, both current and former FDIC employees, recalled “difficult moments” where Chairman Gruenberg’s temper came out in negative ways in meetings with them, although without recalling specific meetings or wanting to remain anonymous.⁵⁰³

Although many members of his senior staff noted that they generally had professional and respectful experiences with him,⁵⁰⁴ when asked about particular meetings of the type described above where staffers felt personally attacked and disrespected, some of the senior staff recognized and understood how the meetings might feel that way.⁵⁰⁵ One senior executive noted that after observing certain of these “episodes” where employees leave feeling

⁴⁹⁵ Interview of M. Gruenberg.

⁴⁹⁶ Witness 566.

⁴⁹⁷ Witness 566.

⁴⁹⁸ Microsoft Teams Chats (May 19, 2023).

⁴⁹⁹ Microsoft Teams Chats (May 19, 2023).

⁵⁰⁰ Microsoft Teams Chats (May 19, 2023).

⁵⁰¹ Microsoft Teams Chats (May 19, 2023).

⁵⁰² Interview of M. Gruenberg.

⁵⁰³ Witness 296; Witness 374; Witness 407; Witness 255; Witness 544; Witness 235.

⁵⁰⁴ Witness 200; Witness 323; Witness 495; Witness 669, Witness 462.

⁵⁰⁵ Witness 362; Witness 669, Witness 462; Witness 269.

“resentment” and “very negative,” the executive had gone to Chairman Gruenberg to inform him that he had “reacted very poorly” in those interactions.⁵⁰⁶ In response to these approaches, Chairman Gruenberg would express surprise that people reacted that way.⁵⁰⁷

The topic of Chairman Gruenberg’s temper and conduct with his staff also came up in an internal meeting among senior leadership immediately following the November 16, 2023 *Wall Street Journal* article.⁵⁰⁸ According to individuals present at that meeting, a senior executive was upset by Chairman Gruenberg questioning the accuracy of the articles, or in his words, remarking that “the broad characterization of the agency” in the articles did not “reflect [his] experience.”⁵⁰⁹ Witnesses said the senior executive got upset in the meeting and stated that the article actually “accurately reflected [Chairman Gruenberg’s] leadership style and everyone in the room [was] afraid to tell [him] that.”⁵¹⁰ According to a witness in the meeting, that senior executive stated, “I’m saying the quiet parts aloud.”⁵¹¹ The senior executive then left the room.⁵¹² What followed, by some accounts, was an “awkward,” “tense,” and “uncomfortable” discussion where the FDIC’s most senior leaders spoke about their experiences with Chairman Gruenberg.⁵¹³ According to some, the feedback was “mixed,” and people were “very careful with the words they used” to describe their interactions with him.⁵¹⁴ Certain individuals acknowledged that the Chairman could be “hard to work for,” that he had high expectations, and a temper.⁵¹⁵ One direct report told the Chairman that sometimes he asks “a lot of questions,” and people can feel “intimidated.”⁵¹⁶ Another noted that he raises his voice when he was unhappy.⁵¹⁷ One individual recalled telling him that he does not need to raise his voice for someone to perceive his unhappiness.⁵¹⁸ One person said that Chairman Gruenberg had “mellowed out” and that he was easier to work with than in the past.⁵¹⁹ Others noted that they had had positive experiences with him.⁵²⁰ When asked about this meeting, Chairman Gruenberg said he recalled it, but stated that his recollection was that they primarily discussed how the Chairman should respond directly to the FDIC’s employees after the articles.⁵²¹ Certain direct reports also recalled this being one of the topics of discussion and voiced their opinion at the meeting that Chairman Gruenberg needed to be proactive and communicate with employees directly.⁵²² Chairman Gruenberg stated during our interview of

⁵⁰⁶ Witness 296.

⁵⁰⁷ Witness 296.

⁵⁰⁸ Witness 362; Witness 323; Witness 462; Witness 269; Witness 656; Witness 502.

⁵⁰⁹ Interview of M. Gruenberg; Witness 323; Witness 269; Witness 502; Witness 324; Witness 656.

⁵¹⁰ Witness 296; Witness 323; Witness 656.

⁵¹¹ Witness 296.

⁵¹² Witness 296; Witness 323; Witness 502; Witness 656.

⁵¹³ Witness 296; Witness 502.

⁵¹⁴ Witness 296; Witness 502; Witness 462; Witness 323.

⁵¹⁵ Witness 656; Witness 200; Witness 296; Witness 323.

⁵¹⁶ Witness 362.

⁵¹⁷ Witness 324.

⁵¹⁸ Witness 462.

⁵¹⁹ Witness 296.

⁵²⁰ Witness 200; Witness 323.

⁵²¹ Interview of M. Gruenberg.

⁵²² Witness 502; Witness 296; Witness 235; Witness 323.

him that he did not recall people discussing at that meeting their interactions with him, other than one direct report saying he was hard to work with in the past and another direct report telling him after the meeting that he could be “intense” at times.⁵²³

Based on our review, including interviews with numerous individuals and review of documents, the credible evidence indicates that Chairman Gruenberg—whether or not intended or fully appreciated by him—has on occasion, including within the last few years, interacted with FDIC employees in a way that was felt to be harsh, demeaning, and insulting. Those in these meetings with him unquestionably perceived someone who was angry and upset and who could not control his temper. It also appears to be the case that most of Chairman Gruenberg’s recent interactions have been professional and appropriate, and some have noted that he has “mellowed” over the years.⁵²⁴ Although we do not find Chairman Gruenberg’s conduct—including his occasional outbursts—to be the root cause of all the workplace issues at the FDIC, we do find that (as a number of people we spoke to in our review have noted) “tone at the top” is important and that positive workplace culture needs to be modeled and reinforced from the top down.⁵²⁵ And as the FDIC faces a crisis relating to its workplace culture, Chairman Gruenberg’s reputation raises questions about the credibility of the leadership’s response to the crisis and the “moral authority” to lead a cultural transformation.⁵²⁶

III. Workplace Culture

The FDIC has identified a set of six core values that guide it in accomplishing its mission and that the FDIC itself views as critical to its success.⁵²⁷ These long-standing values, which have been expressed by the FDIC and its leadership going back at least to 2008, are fairness, accountability, competence, effectiveness, integrity, and teamwork.⁵²⁸ Within the FDIC, these six core values are identified by the acronym FACE IT. In assessing and making factual findings related to the FDIC’s workplace culture for purposes of this Report, we have considered how the structures and behaviors of the organization align with these values when it comes to sexual harassment, discrimination, and other interpersonal misconduct. In other words, we considered whether the current culture of the FDIC—as reported and experienced by its employees—embodies these values. As set forth below, the experience of many FDIC employees is that it currently does not.

A. Fairness

The majority of individuals who reported to the hotline and were interviewed described the FDIC’s culture as reflecting outdated notions regarding the way women, people of diverse backgrounds, and people in general should be treated. Current FDIC employees,

⁵²³ Interview of M. Gruenberg.

⁵²⁴ Witness 296; Witness 548; Witness 489; Witness 255; Witness 495; Witness 200; Witness 362; Witness 323.

⁵²⁵ Witness 502; Witness 255; Witness 660; Witness 253; Witness 321; Witness 360; Witness 495; Witness 371.

⁵²⁶ Witness 255.

⁵²⁷ 2023 ANNUAL PERFORMANCE PLAN 5, <https://www.fdic.gov/about/strategic-plans/performance/2023annualplan.pdf>.

⁵²⁸ 2023 ANNUAL PERFORMANCE PLAN 5, <https://www.fdic.gov/about/strategic-plans/performance/2023annualplan.pdf>; Witness 323.

regardless of gender, race, or other demographic characteristics, consistently described the culture as a “good ol’ boys club.” This description came from individuals in a variety of regions and field offices.⁵²⁹ In describing the “good ol’ boys club,” FDIC employees described groups of individuals that were perceived to have formed “cliques.”⁵³⁰ Some employees have further described the culture as being led by White men who had been at the FDIC for long periods of time or who were in positions of power, such as in commissioned roles.⁵³¹ The individuals in those “cliques” are perceived to “have each other’s backs”⁵³² in a way that results in those outside the clique feeling isolated. Those outside these groups are left with a perception of favoritism such that those within these more powerful groups only “take care of or groom certain people” that look like or act like they do.⁵³³ As one employee who has been at the agency for decades said: it’s a “good ol’ boys’ network, people look out for each other, and promote each other.”⁵³⁴ One employee used the word cronyism to describe the culture,⁵³⁵ while another described it as having “in crowds” that would “stick together” in certain regions and field offices.⁵³⁶ One employee summarized it by saying that the FDIC has a “1950s management style with an old boys’ club who promoted only others who look and think like them.”⁵³⁷ The result is that employees have an understanding that there is one set of rules for those who are not part of the “club” and another, more lenient set of rules for those who are in the club: “[w]e expected one group to follow the rules, be respectful and professional. Then the other group who had been there many years—they weren’t held to the same standard.”⁵³⁸

This toxic “boys club culture” fosters an environment in which subtle and not-so-subtle forms of gender and other biases are permitted.⁵³⁹ For women and individuals from underrepresented groups, this includes gender and race-based name calling,⁵⁴⁰ difficulty being promoted after having children,⁵⁴¹ a lack of respect for women,⁵⁴² pressure to participate in offensive jokes to avoid “being considered a prude,”⁵⁴³ experiencing different accountability standards,⁵⁴⁴ and their opinions not being heard.⁵⁴⁵

⁵²⁹ *E.g.*, Witness 504; Witness 493; Witness 274; Witness 471; Witness 421; Witness 311; Witness 567; Witness 646.

⁵³⁰ Witness 646; Witness 674; Witness 573; Witness 261; Witness 280.

⁵³¹ Witness 449; Witness 302; Witness 195; Witness 229.

⁵³² Witness 646.

⁵³³ *E.g.*, Witness 250; Witness 24; Witness 349; Witness 421; Witness 180; Witness 527.

⁵³⁴ Witness 669.

⁵³⁵ Witness 576.

⁵³⁶ Witness 522.

⁵³⁷ Witness 567.

⁵³⁸ Witness 71.

⁵³⁹ Specific examples of sexual harassment and discrimination are discussed further below in Report, “Factual Findings, Allegations of Interpersonal Misconduct” Section and Appendix A.

⁵⁴⁰ Witness 204; Witness 497; Witness 318.

⁵⁴¹ Witness 312.

⁵⁴² Witness 318.

⁵⁴³ Witness 563; Witness 386.

⁵⁴⁴ Witness 477.

⁵⁴⁵ Witness 239.

A number of current FDIC employees who had had other government service experience, consistently compared the FDIC culture negatively to their experience at other agencies, including individuals with decades of government service. One such individual noted that the “experience I have had at the FDIC is not like anything else I have had elsewhere which makes me know it isn’t right”⁵⁴⁶ and another said, “I have been at two other federal agencies and the FDIC is the worst.”⁵⁴⁷ Current employees with experience at other federal agencies also described how the FDIC has a sense of exceptionalism, manifesting itself in the attitude that the “FDIC is a separate special agency and we can make up the rules as we go” because of a lack of day-to-day oversight that other federal agencies have.⁵⁴⁸

While some FDIC employees expressed a view that the FDIC was more of a “good ol’ boys club” in earlier decades,⁵⁴⁹ that their personal experiences were positive or had improved,⁵⁵⁰ or that the allegations in the articles were “dated,”⁵⁵¹ far more FDIC employees who reported to us expressed the view that improvements had been insufficient to address these issues⁵⁵² and recognized that large pockets of the FDIC remain “male dominated.”⁵⁵³ Several FDIC employees noted that there are now several senior women in Director roles and that this reflected a less insular and more diverse culture.⁵⁵⁴ Others noted that, nonetheless, the organization overall remains “male dominated,” with individuals who “don’t see the things” that are happening to women and people from diverse backgrounds.⁵⁵⁵ And still others reflected that women are inadvertently perpetuating this “club-like” culture by doing what they were told, to fit in and avoid “rocking the boat.”⁵⁵⁶

In addition, while some FDIC employees raised a concern that the allegations publicly reported by the *Wall Street Journal* beginning in the fall of 2023 were an attempt to paint the entire corporation with a broad brush⁵⁵⁷ when there were only a “few bad apples”⁵⁵⁸ or the incidents were “isolated,”⁵⁵⁹ an even greater number of FDIC employees (particularly those in the regional and field offices) recognized their own experiences at the FDIC in the articles.⁵⁶⁰ And many recognized that, even if the FDIC just had “pockets of horrible culture,”⁵⁶¹ this could be toxic at the FDIC because people have lengthy tenures, which can

⁵⁴⁶ Witness 45.

⁵⁴⁷ Witness 74.

⁵⁴⁸ Witness 612.

⁵⁴⁹ Witness 484; Witness 416; Witness 235.

⁵⁵⁰ Witness 348; Witness 251.

⁵⁵¹ Witness 490; Witness 488.

⁵⁵² Witness 357.

⁵⁵³ Witness 315; Witness 229; Witness 239; Witness 566; Witness 449; Witness 191.

⁵⁵⁴ Witness 324; Witness 471.

⁵⁵⁵ Witness 566.

⁵⁵⁶ Witness 504.

⁵⁵⁷ Witness 682.

⁵⁵⁸ Witness 204.

⁵⁵⁹ Witness 669.

⁵⁶⁰ Witness 219; Witness 330; Witness 531; Witness 381; Witness 447; Witness 318.

⁵⁶¹ Witness 607; Witness 401.

create “stagnancy” and a lack of “cultural progression.”⁵⁶² Others said that the allegations in the articles were “surprising” and indeed “eye-opening”⁵⁶³ and that it made them second guess themselves and ask “am I just not observing it and looking enough.”⁵⁶⁴

The view that the FDIC has a culture of “favoritism” for those part of powerful “cliques” also fosters an environment in which FDIC employees have a fear of reporting instances of unfair treatment out of concern that they will be retaliated against. This fear is so deeply ingrained that a number of individuals went to great lengths to conceal their identities when reporting to our hotline, including by disguising their voices,⁵⁶⁵ calling from family or friends’ phones,⁵⁶⁶ and creating untraceable email addresses.⁵⁶⁷ And 203 people reported to our hotline using the anonymous web-based channel that was provided, while 56 others requested that any comments shared orally be kept anonymous in this Report. Those who did reach out, anonymously or not, emphasized that they did so at personal risk because they “cared about the FDIC.”⁵⁶⁸

In describing the basis for the fear of retaliation, FDIC employees described a perception that when complaints are made, managers “close ranks” and work to protect themselves instead of taking concerns seriously.⁵⁶⁹ This was described as “circling the wagons” or “CYA” or a “protect their own” mentality.⁵⁷⁰ One employee summarized this by saying that many at the FDIC go “back 20-30 years,” and “[w]hoever I tell, they will protect each other, they’ve worked together 30 years—[and] then who am I?”⁵⁷¹ These perceptions contributed to an overall description of the FDIC as an insular, and in many ways, a “toxic culture.”⁵⁷²

Others expressed that the impact of the “good ol’ boys network” was that there were groups of people who were “set in their ways,”⁵⁷³ “old school,”⁵⁷⁴ “stubborn”⁵⁷⁵ “leer[y]” of outsiders,⁵⁷⁶ and generally resistant to change.⁵⁷⁷ Many expressed that a major consequence of this is that when issues of workplace culture get raised, they “fall on deaf ears.”⁵⁷⁸ As one employee put it, after telling a manager that certain behavior was making women

⁵⁶² Witness 309; Witness 618; Witness 563; Witness 656; Witness 394.

⁵⁶³ Witness 251.

⁵⁶⁴ Witness 672.

⁵⁶⁵ Witness 23.

⁵⁶⁶ Hotline Anonymous Form Submission (Feb. 24, 2024).

⁵⁶⁷ Witness 214.

⁵⁶⁸ Witness 246; Witness 146.

⁵⁶⁹ Witness 538.

⁵⁷⁰ Witness 503; Witness 684; Witness 321; Witness 280; Witness 421.

⁵⁷¹ Witness 271.

⁵⁷² Witness 222; Witness 130.

⁵⁷³ Witness 248; Witness 241.

⁵⁷⁴ Witness 679.

⁵⁷⁵ Witness 679.

⁵⁷⁶ Witness 379.

⁵⁷⁷ Witness 379; Witness 253.

⁵⁷⁸ Witness 505; Witness 642; Witness 130.

uncomfortable, the manager responded by saying the actions were “harmless.”⁵⁷⁹ Another described it as management failing to evolve in that “they don’t understand inappropriate behavior.”⁵⁸⁰ As an example of this, one FDIC employee informed us that he did not think that the FDIC had cultural problems because they were not as bad as “factories, warehouses and construction sites.”⁵⁸¹

All of these views contribute to a widespread attitude among FDIC employees that reporting inappropriate behavior is at best useless or at worst personally risky.⁵⁸² Many described a fear of specific retaliation based on hearing that it had happened to others or having personally experienced it.⁵⁸³ The forms of retaliation people fear ranged from being made to travel or travel more often,⁵⁸⁴ receiving bad evaluations,⁵⁸⁵ to getting reassigned⁵⁸⁶ or having bonuses withheld,⁵⁸⁷ to failing to be promoted⁵⁸⁸ or being fired⁵⁸⁹ or management would simply “mak[e] your life miserable.”⁵⁹⁰ Many said they learned early on that if they reported inappropriate conduct their “career would be over.”⁵⁹¹ As one manager said, she tells others all the time: “a) You don’t say anything; and b) everyone will know in three days...They find out via the person that was disciplined....They tell one person, and it spreads. Employees do find out what is going on.”⁵⁹² A number also expressed that, at bottom, they fear reporting misconduct because they fear losing their jobs.⁵⁹³

FDIC employees who reported to us expressed fear that retaliation would not be overt, and that it would take more subtle forms, including: having their work product more closely scrutinized or judged more harshly than others;⁵⁹⁴ being isolated or left out of meetings and discussions;⁵⁹⁵ important information being withheld;⁵⁹⁶ having unrealistic deadlines set;⁵⁹⁷ being set up to fail by managers;⁵⁹⁸ being given worse work assignments;⁵⁹⁹ having disparate standards for work set; being denied Expressions of Interest (rotations through other groups) or

⁵⁷⁹ Witness 627.

⁵⁸⁰ Witness 195.

⁵⁸¹ Witness 663.

⁵⁸² Witness 459; Witness 190; Witness 184; Witness 602.

⁵⁸³ Witness 496; Witness 190; Witness 653; Witness 522; Witness 414; Witness 703.

⁵⁸⁴ Witness 381.

⁵⁸⁵ Witness 190.

⁵⁸⁶ Witness 381.

⁵⁸⁷ Witness 653.

⁵⁸⁸ Witness 184.

⁵⁸⁹ Witness 602.

⁵⁹⁰ Witness 381.

⁵⁹¹ Witness 602; Witness 674.

⁵⁹² Witness 575.

⁵⁹³ Witness 297; Witness 394; Witness 674.

⁵⁹⁴ Witness 330.

⁵⁹⁵ Witness 74.

⁵⁹⁶ Witness 74.

⁵⁹⁷ Witness 74.

⁵⁹⁸ Witness 690.

⁵⁹⁹ Witness 574.

extensions to rotations; being passed up for promotions; having requests for personal time off or sick leave second-guessed;⁶⁰⁰ and obtaining fewer sought-after assignments, including opportunities to lead examinations.⁶⁰¹ Each of these forms of retaliation would mean fewer opportunities for success and advancement within the FDIC. And others noted that proving these more subtle forms of retaliation would be difficult and thus less likely to be reported.⁶⁰²

We found that this fear of retaliation was exacerbated by many employees' belief that reports of inappropriate workplace conduct would not be kept confidential,⁶⁰³ and that supervisors and managers had both formal and informal means to learn about complaints against them. For example, one FDIC employee who informally complained recalled being told by her manager to "remember who is giving you feedback."⁶⁰⁴ Another reported observing a manager trying to find out who had made specific comments in what was supposed to be an anonymous Federal Employee Viewpoint Survey.⁶⁰⁵ Another employee noted that "[r]etaliation takes place through informal networks of managers...they talk to each other outside of work...they don't let their employees transfer or give them promotional opportunities."⁶⁰⁶

FDIC employees also reported that individuals would be informally mocked for making reports, and that making a complaint was viewed as disloyal.⁶⁰⁷ One employee reported that, in the wake of the recent press allegations, another employee openly cursed the individuals who made allegations, saying that they were "going against the agency."⁶⁰⁸ Several FDIC employees reported instances in which other employees tried to find out who had made a report and referred to said individuals as "tattlers,"⁶⁰⁹ as having a "scarlet letter,"⁶¹⁰ or generally chastised them for reporting.⁶¹¹ FDIC employees who experienced this "culture of fear" do not view the culture as fair and do not feel that they have "psychological safety."⁶¹² Moreover, a view reported to us was that FDIC employees harbored a "fear of rocking the boat" and a willingness to "tolerate more" because of the higher pay.⁶¹³

Non-commissioned employees—particularly those looking to become commissioned—suffer significantly from this fearful culture. Non-commissioned employees reported being spoken to in demeaning and belittling ways, while others described the

⁶⁰⁰ Witness 690.

⁶⁰¹ Witness 376.

⁶⁰² Witness 315.

⁶⁰³ Witness 607; Witness 568; Witness 372; Witness 278.

⁶⁰⁴ Witness 498.

⁶⁰⁵ Witness 260.

⁶⁰⁶ Witness 188.

⁶⁰⁷ Witness 673; Witness 204.

⁶⁰⁸ Witness 219; Witness 331.

⁶⁰⁹ Witness 498.

⁶¹⁰ Witness 331.

⁶¹¹ Witness 595; Witness 229; Witness 421; Witness 462.

⁶¹² Witness 690.

⁶¹³ Witness 410; Witness 607.

commissioned examiner culture as largely “arrogant”⁶¹⁴ and “entitled.”⁶¹⁵ One FDIC employee reported being quizzed by commissioned examiners and, if she did not get the answer right, being told, “you didn’t earn your right to get paid today.”⁶¹⁶ Another reported asking a commissioned examiner to help her carry coffee and being told, “that’s below my pay grade.”⁶¹⁷ While some of these comments may have been intended as attempts at humor, non-commissioned employees reported feeling that those comments made the commissioned examiners feel protected, “like fixtures” who could do “no wrong,” with non-commissioned employees considered “disposable.”⁶¹⁸

For those seeking to be commissioned, the power held by commissioners over their future served as yet another deterrent to reporting any misconduct. Some employees compared the commissioning process to pledging a college fraternity, noting that examiners-in-training, known as Financial Institution Specialists, were even more vulnerable than pledges because the commissioned examiners “control your future.”⁶¹⁹ One FDIC employee summarized it as follows:

“[i]f you’re a non-commissioned examiner, these senior examiners hold the final say in your permanence at the agency. These examiners are the ones who provide feedback during your commissioning program, and can elevate their concerns with your advancement to commissioned examiner. They would do this through the developmental feedback form, which . . . could lead to you losing your job. If you fail the commissioning program, you would have to leave or move to a different department. . . . [R]elationships with others was critical. There was generally a lot of camaraderie—you ate with your teams and traveled with your teams. This meant that it was very difficult to reprimand individuals when you knew them so well and especially when they were the ones who were promoting you.”⁶²⁰

In sum, non-commissioned employees and those going through the commissioning process reported an even greater fear of reporting misconduct and described instances in which they did not do so because of this fear.⁶²¹

B. Accountability

We found in our review that the core value of “accountability” had been negatively impacted by a widely held view that the consequences for misconduct, including

⁶¹⁴ Witness 656.

⁶¹⁵ Witness 435.

⁶¹⁶ Witness 523.

⁶¹⁷ Witness 219.

⁶¹⁸ Witness 435; Witness 226; Witness 485.

⁶¹⁹ Witness 291.

⁶²⁰ Witness 430.

⁶²¹ Witness 498; Witness 430; Witness 291; Witness 72.

sexual harassment, discrimination, and other forms of interpersonal misconduct, are not sufficiently severe.

FDIC employees blamed the sense of a lack of accountability in part on the lack of transparency. While recognizing that confidentiality and applicable privacy law might limit what can be disclosed about particular disciplinary decisions, FDIC employees overwhelmingly reported that more needed to be communicated.⁶²² Many FDIC employees reported being unaware of whether any investigation had even occurred in response to a complaint made, much less what the outcome was.⁶²³ As one FDIC employee put it, “confidentiality is different from a lack of transparency, and sometimes, one can hide the other.”⁶²⁴ Employees expressed a view that, with respect to allegations of misconduct, the FDIC had a culture of not putting “things in writing” and, more generally, people were praised for being like the “Pink Panther” pulling strings without leaving fingerprints.⁶²⁵ One FDIC employee noted that during a mediation process just earlier this year in response to a sexual harassment complaint she made, she was offered to have the “whole thing” not put in writing in what she perceived to be an attempt to protect the respondent.⁶²⁶

FDIC employees also reported that, instead of being disciplined, individuals who were known to have engaged in interpersonal misconduct appeared to be simply “moved around.”⁶²⁷ One FDIC employee described this as “brushing things under the rug”⁶²⁸ and another said that it reflected an alternative to actually “dealing with the issues.”⁶²⁹ One employee described the FDIC response to interpersonal misconduct as “pay, promote, or move them,” reflecting a view that those engaged in interpersonal misconduct often received settlement payments, remained at the FDIC, or had been transitioned to different roles or even promoted over time.⁶³⁰ Some expressed the view that there were particular parts of the agency where people who had engaged in misconduct were moved, noting that “Corporate University was where executives got exiled” when “things were not on the up-and-up.”⁶³¹ One employee noted that internally people joked that “if you want to get a promotion you can either relocate or do something bad, and you’ll get a position in Washington or Corporate University.”⁶³² Others believed that positions that used to never exist were often created to place individuals who had been alleged to have engaged in misconduct but where the FDIC was not prepared—

⁶²² Witness 413; Witness 630; Witness 324.

⁶²³ Report, “Factual Findings” Section; Witness 379.

⁶²⁴ Witness 653.

⁶²⁵ Witness 531.

⁶²⁶ Witness 630.

⁶²⁷ Witness 235; Witness 333; Witness 493; Witness 593.

⁶²⁸ Witness 403.

⁶²⁹ Witness 493; Witness 593.

⁶³⁰ Witness 403.

⁶³¹ Witness 592.

⁶³² Witness 563.

or willing—to take disciplinary action.⁶³³ In that regard, a number of employees compared the FDIC’s approach to internal misconduct to that of the Catholic Church.⁶³⁴

The impression of a lack of accountability tied back to the sense of favoritism and protectionism, where, as one employee put it, “[t]he overall culture at FDIC is ‘we protect our executives and the higher-ranking supervisors and we are very quick to remove any lower level non-supervisory positions.’”⁶³⁵ One union representative illustrated this double standard, saying, if an employee files a grievance, “it will be denied all the way up,” but “there is no reason for management to solve issues because they are never held accountable.”⁶³⁶ That perspective, as noted by some employees, was inconsistent with their expectations of management, which is that “they should be held to a higher standard, and the discipline should be elevated in severity because of their management position.”⁶³⁷ Examples of management being protected included reports of how employees were told in response to complaints that a manager had “a lot going on at home and it will be fine” or that it was just the manager being the manager.⁶³⁸ Some reported that they believed the FDIC simply values managers more, so it is willing to accept poor behavior from them and have a “whole team of lawyers” ready to go to battle and “defend them to a fault.”⁶³⁹ Employees reported experiencing or observing interpersonal misconduct by a number of the managers currently participating in the Action Plan. One of them shared that for this reason, his “level of optimism” in the Action Plan “went to zero” and it was like the “foxes guarding the hen house.”⁶⁴⁰

Others expressed concerns that judgments varied along demographic lines, saying that disciplinary actions are taken more swiftly for minorities as compared to non-minorities, who are given more chances.⁶⁴¹ Female leaders made similar observations about senior women at the FDIC,⁶⁴² saying for example, “[i]t feels like the senior women leaders at the FDIC have to be twice as good or have no margin, no grace.”⁶⁴³

C. Competence

With respect to the value of “competence,” FDIC employees almost universally noted the value the agency put on technical examination skills that has bred a toughness in the approach to education and training. Those who we spoke to as part of our review noted that the FDIC, in its hiring and training, invested heavily in technical examination skills but far less on other competencies such as management or leadership skills. Many FDIC employees described experiences that reflect this narrow view of “competence” in a “sink or swim”

⁶³³ Witness 587; Witness 514; Witness 289.

⁶³⁴ Witness 98; Witness 672.

⁶³⁵ Witness 673; Witness 465.

⁶³⁶ Witness 465.

⁶³⁷ Witness 541.

⁶³⁸ Witness 535.

⁶³⁹ Witness 614; Witness 109.

⁶⁴⁰ Witness 380.

⁶⁴¹ Witness 287.

⁶⁴² Witness 239.

⁶⁴³ Witness 502.

mentality about learning and development, with one saying that it is like “being thrown to the wolves.”⁶⁴⁴

Others emphasized a lack of a learning and development culture evident in the way mistakes were handled—perceived as career limiting, not opportunities for training. While lauded as a pursuit of “perfection” by some,⁶⁴⁵ other employees reported a culture filled with negativity and criticism.⁶⁴⁶ FDIC employees who worked at other government agencies noted that they had “never worked in a place that was more negative”⁶⁴⁷ than the FDIC, and many tied negative experiences to those who were outside of the “good ol’ boys club,” often women and people from underrepresented groups.⁶⁴⁸

Further, while FDIC employees recognized that technical skills are mission critical, they view the FDIC as placing far less—and not enough—emphasis on leadership capacity and skills.⁶⁴⁹ As one executive said, “management thinks they manage banks, they don’t see their jobs as managing the people who manage the banks.”⁶⁵⁰ These skills are not recognized as mission critical, and the FDIC employees resoundingly said there was insufficient attention to hiring based on these skills and training for these skills while at the FDIC. One employee summarized it by saying that the FDIC is “not a people-friendly agency to work for,”⁶⁵¹ and another said that “good managers treat their employees as human beings. The [FDIC] didn’t care.”⁶⁵² The lack of emphasis on, and training for, such leadership skills is part of the reason there is a “sink or swim” type of culture in parts of the FDIC. Many described this aspect of the culture as more negatively impacting those with less industry knowledge and reference points, and less robust networks both outside and inside the FDIC, which more frequently are women and people from underrepresented groups.⁶⁵³

Many employees reported that this focus on technical skills was accompanied by a lack of emphasis on “people skills,” including leadership and management skills. Employees noted that some are promoted because they are good at the technical aspects of the work, even if they are poor managers. As one employee remarked, “[w]e tolerate behaviors we shouldn’t because the employee is deemed to be good at their job.”⁶⁵⁴ In fact, senior members of the Legal Division acknowledged that, in thinking through disciplinary issues, individuals who were strong technical performers but had engaged in interpersonal misconduct that had created difficult work environments for colleagues, would usually be moved to a different position (with less supervisory authority) while keeping the same pay and similar work.⁶⁵⁵

⁶⁴⁴ Witness 648; Witness 274; Witness 523; Witness 212.

⁶⁴⁵ Witness 206.

⁶⁴⁶ Witness 206; Witness 271; Witness 608; Witness 433.

⁶⁴⁷ Witness 396.

⁶⁴⁸ Witness 567; Witness 318; Witness 312; Witness 527; Witness 522; Witness 180; Witness 699.

⁶⁴⁹ Witness 656.

⁶⁵⁰ Witness 656.

⁶⁵¹ Witness 562.

⁶⁵² Witness 481.

⁶⁵³ Witness 24; Witness 469; Witness 568; Witness 524.

⁶⁵⁴ Witness 475.

⁶⁵⁵ Witness 333.

Such moves, from the perspective of complainants and other observers, are not viewed as “discipline” at all. Similarly, because technical skills are so much more valued than leadership skills, FDIC employees expressed a genuine fear of raising concerns about their experiences being managed because it is treated as “whining” or “complaining” instead of as a real issue. In fact, in 2021, one FDIC section was the subject of a special investigation into allegations of a toxic environment, which found, among other things, that women could not raise issues without being labeled “complainers.”⁶⁵⁶

D. Effectiveness

In terms of “effectiveness,” while FDIC employees routinely praised the Corporation’s history of responding to challenges presented by the financial system, that praise did not extend to the FDIC’s effectiveness in handling issues related to workplace conditions, including sexual harassment, discrimination, and other interpersonal misconduct. For example, the overwhelming sentiment expressed in our review was that the FDIC was filled with too many “seasoned employees who are risk averse” and that the FDIC was too risk-averse in general.⁶⁵⁷ This has led to those involved in misconduct not being made to face sufficient discipline for fear of litigation.⁶⁵⁸ Many refer to the FDIC as litigation or risk averse when describing the FDIC’s response to issues of sexual harassment, discrimination, and other forms of interpersonal misconduct.⁶⁵⁹ Some who had experience at other government agencies described the FDIC as being definitely “conservative” in terms of discipline by comparison.⁶⁶⁰ Others explained that the risk-averse posture led to an unreasonably high standard for discipline akin to “beyond a reasonable doubt” where you need to find the wrongdoer “really, really guilty” before being able to take action.⁶⁶¹ One executive explained that “[i]n many cases, I know that we are afraid to get sued, but that is the wrong fear. We are fearing the wrong thing. Fearing that person staying in that role should be scarier than losing a couple years’ pay. We talk about reputation risk a lot in [our Division]. I wish we looked at that more.”⁶⁶²

Another aspect of the FDIC’s culture that FDIC employees described as impacting effectiveness was a hierarchic structure that did not welcome criticism of or disagreement with more senior managers. The employees we spoke with reported an “FDIC way” of doing things where pushback would come “at a personal cost” and result in being “shot down.”⁶⁶³ This culture has led employees at the FDIC to be “careful not to get on someone’s bad side” and to an overall sense of a “yes person” culture.⁶⁶⁴ As one employee noted, “whatever the executive team says to do, you do. Protect them, fall in line with them,

⁶⁵⁶ Witness 540.

⁶⁵⁷ Witness 403; Witness 610; Witness 656; Witness 495.

⁶⁵⁸ Witness 333; Witness 656; Witness 653.

⁶⁵⁹ Witness 653; Witness 490; Witness 188; Witness 656; Witness 323.

⁶⁶⁰ Witness 575.

⁶⁶¹ Witness 441; Witness 416; Witness 459.

⁶⁶² Witness 252.

⁶⁶³ Witness 628; Witness 98; Witness 531.

⁶⁶⁴ Witness 619; Witness 300; Witness 690.

don't question."⁶⁶⁵ This all leads to a "fear of taking action."⁶⁶⁶ In short, criticism flows freely down, while upward feedback is far less welcome.⁶⁶⁷ As one FDIC employee summarized, "[c]ulture here is don't have an opinion, don't speak up, if you do you're a problem and you'll be dealt with."⁶⁶⁸

E. Integrity

Having a culture of "integrity" requires open, honest, and respectful communications such that employees recognize that their input is valued and respected. Many FDIC employees reported experiences in which communications with them did not meet those standards. Lack of transparent and open communications has been the subject of many comments over the years in FEV surveys and other workplace culture reviews.⁶⁶⁹ And instances of disrespectful communications have led FDIC employees to describe their working environment as "toxic."⁶⁷⁰ While certainly not universal, experiences of disrespectful communication were reported to us from nearly every division, regional and field office, including the FDIC's headquarters. This disrespectful form of communicating involved reported instances of yelling,⁶⁷¹ screaming at people in hallways,⁶⁷² being spoken poorly of in front of others,⁶⁷³ managers throwing what was described as "fits,"⁶⁷⁴ being treated or spoken to like a child,⁶⁷⁵ supervisors "cussing and carrying on,"⁶⁷⁶ frequent belittling in front of others,⁶⁷⁷ being berated,⁶⁷⁸ being demeaned,⁶⁷⁹ and, while infrequent, threats of violence.⁶⁸⁰

Many reported that the FDIC way of responding to this type of behavior is to "adapt as long as no one is getting hurt" because "people have a variety of communication styles."⁶⁸¹ Such a response fails to account for the impact that this type of disrespectful communication has on those who experience it. Many people cried while conveying this information to us and many described being brought to tears in the moment during the experience, which had a lasting and traumatic effect. One employee noted that after she was routinely yelled at by her supervisor, including being told that she was "incompetent" and "a waste of time," and being used as an example of "what not to do" in front of others, she was

⁶⁶⁵ Witness 252.

⁶⁶⁶ Witness 252.

⁶⁶⁷ Witness 21; Witness 614.

⁶⁶⁸ Witness 260.

⁶⁶⁹ Report, "Prior Programs, Reports, and Surveys Relating to Workplace Culture" Section.

⁶⁷⁰ Witness 607.

⁶⁷¹ Witness 221; Witness 684; Witness 314.

⁶⁷² Witness 98.

⁶⁷³ Witness 444; Witness 249; Witness 469.

⁶⁷⁴ Witness 662.

⁶⁷⁵ Witness 267; Witness 510.

⁶⁷⁶ Witness 109; Witness 627.

⁶⁷⁷ Witness 180.

⁶⁷⁸ Witness 309; Witness 642; Witness 260.

⁶⁷⁹ Witness 671.

⁶⁸⁰ Witness 358; Witness 274; Witness 608.

⁶⁸¹ Witness 287.

left with a feeling of dread anytime she had to speak to her supervisor.⁶⁸² Others described their experiences as verbally and/or emotionally abusive.⁶⁸³

F. Teamwork

Many FDIC employees expressed that the FDIC has a hierarchic⁶⁸⁴ and militaristic culture.⁶⁸⁵ While some described the benefits of a clear “chain of command” and a strong sense of the mission, many complained about the rigidity and challenges it created in raising concern about managers, including about workplace conduct. While some noted that the militaristic culture had improved from years ago when, as one FDIC employee explained, “[y]ou weren’t even allowed to knock on someone’s door/office, you had to call ahead,”⁶⁸⁶ it remains an extremely hierarchic culture—particularly in certain regions and divisions—and even to this day, employees reported to us examples of how certain managers will not answer the phone if the call comes in from someone who is not the proper level of seniority.⁶⁸⁷

FDIC employees described the divisions with bank examiners, including the Division of Risk Management Supervision (“RMS”), as having the most hierarchic and militaristic culture. They attributed that culture to the ways in which examiners are trained. One individual who moved from a different division into RMS said that he “noticed something wrong with the dynamics of RMS immediately.”⁶⁸⁸ Others described the environment as like a “prison,”⁶⁸⁹ and like “being part of a gang, kind of like a mafia organization.”⁶⁹⁰ Other employees reported that RMS is “adamant” about building its workforce from the ground up, *i.e.* hiring college graduates and “indoctrinating” them.⁶⁹¹ Other individuals said that people who did not start as an examiner to rise up through the ranks are viewed as “outsiders.”⁶⁹² Similarly, one employee noted that there is a divide between the people who came from the private sector and those who grew up there as examiners, since the former are treated like second class citizens.⁶⁹³

We found based on our review that this hierarchic culture existed particularly at the regional and field office level. In particular, a large number of FDIC employees described field offices as “fiefdoms.”⁶⁹⁴ Employees reported that supervisors in field offices serve very long terms while having authority over a small team of individuals.⁶⁹⁵ These supervisors are

⁶⁸² Witness 678.

⁶⁸³ Witness 662; Witness 24.

⁶⁸⁴ Witness 235; Witness 462; Witness 660; Witness 98; Witness 690.

⁶⁸⁵ Witness 699; Witness 352; Witness 255.

⁶⁸⁶ Witness 352; Witness 321.

⁶⁸⁷ Witness 321.

⁶⁸⁸ Witness 318.

⁶⁸⁹ Witness 560.

⁶⁹⁰ Witness 560.

⁶⁹¹ Witness 255.

⁶⁹² Witness 195; Witness 280.

⁶⁹³ Witness 618.

⁶⁹⁴ Witness 602; Witness 462; Witness 587; Witness 302.

⁶⁹⁵ Witness 182.

responsible for performance ratings, career paths, and mentorships. Employees have said that this dynamic makes it difficult for employees to report misconduct and causes people to leave the FDIC if they don't get along with their supervisors in the field office.⁶⁹⁶ The power and control exerted by the leaders within the field office extended to the sharing of knowledge about misconduct between offices. For example, one senior executive described a situation where he was tasked with investigating an ethics violation in a field office.⁶⁹⁷ He was shocked to learn that the individual being investigated had forbidden his supervisory examiners from saying anything about his misconduct, and it showed “just how [that individual] wielded control and influence in the [field] office.”⁶⁹⁸

Employees shared that headquarters can be disconnected from field offices in the different regions⁶⁹⁹ because of the way that they are “decentralized.”⁷⁰⁰ This disconnect created vulnerabilities—with examiner trainees straight out of college working with supervisors who hold the key to their commission in the field offices.⁷⁰¹ This dynamic allowed for supervisors to create an “in group” and “out group” with rewards for those in the “in group,” and poor treatment for those in the “out group.”⁷⁰² Some noted that regional offices willingly turned a blind eye to what Field Office Supervisors were doing in their “fiefdom.”⁷⁰³ Another employee described the field offices as their own microcosms with their own cultures, like “mini kingdoms.”⁷⁰⁴

Employees said that this culture, when taken all together, exacerbated the issues described herein, including greater incidents of bullying,⁷⁰⁵ having leadership that tends to be made of great performers without good interpersonal skills,⁷⁰⁶ and suppressing reports of misconduct within the field office.⁷⁰⁷

Bank examiners also had a different and unique experience than non-examiners as, among other things, they generally spend significant time together being trained, including at the Seidman Center.⁷⁰⁸ Some FDIC employees have reported that there is a culture of “partying” at the Seidman Center (or the Student Residence Center), which is the FDIC-owned training campus in Arlington, VA that includes both classrooms and lodging.⁷⁰⁹ And this “partying” culture was described by many FDIC employees within RMS as being carried outside the Seidman Center and into the field. FDIC employees on exams were involved in

⁶⁹⁶ Witness 182.

⁶⁹⁷ Witness 669.

⁶⁹⁸ Witness 669.

⁶⁹⁹ Witness 441; Witness 462.

⁷⁰⁰ Witness 324.

⁷⁰¹ Witness 462.

⁷⁰² Witness 587.

⁷⁰³ Witness 589.

⁷⁰⁴ Witness 508.

⁷⁰⁵ Witness 255; Witness 656; Witness 674.

⁷⁰⁶ Witness 255; Witness 592.

⁷⁰⁷ Witness 24.

⁷⁰⁸ Witness 645.

⁷⁰⁹ THE FDIC, *Visiting the FDIC*, <https://www.fdic.gov/about/visiting/> (last visited Apr. 22, 2024).

excessive drinking, attending strip clubs, and peer pressure to engage in these activities.⁷¹⁰ One FDIC employee said the experience at the Seidman Center was “so crazy” that, by comparison, these sorts of things did not seem unusual or problematic.⁷¹¹ Another said that in RMS as a bank examiner, “[y]ou either fit in and party and hang out or you are excluded.”⁷¹² Others said they did not think there was any pressure to participate in any drinking or other activities and that the eating, drinking, and doing other activities contributed positively to the team’s ability to work together.⁷¹³

Many employees noted also that the constant traveling of RMS bank examiners had contributed to an environment where misconduct proliferates. When out of town on an examination, bank examiners spend almost every minute of their day together, and the supervisors on these trips are generally responsible for more junior examiners’ evaluations. While travelling they generally stay at the same hotels and share rental cars.⁷¹⁴ FDIC employees said that the constant travel led to “blurring a boundary” between the personal and professional.⁷¹⁵ As one employee explained, car-sharing was a significant problem for examiners who are traveling for work since it limits their freedom and ability to make decisions. She said, “while it’s easy to choose not to participate in drinking at the hotel bar or at restaurants, examiners must share vehicles going to and from work or weekend activities.”⁷¹⁶ Several RMS employees dismissed concerns about inappropriate conduct while travelling as “on people’s personal time” without appreciating that work travel is considered part of the workplace.⁷¹⁷

As referenced above, interactions at the Seidman Center have contributed to the “blurring of boundaries” between the personal and professional. FDIC employees from various Divisions, including new hires, from across the country have regularly stayed at the Seidman Center while attending classes there, particularly noncommissioned examiners or Financial Institution Specialists.⁷¹⁸ Non-FDIC employees also stay at the Seidman Center, including employees of other financial regulatory agencies.⁷¹⁹ Some FDIC employees described a culture of “partying” at the Seidman Center, and have likened it to a “fraternity.”⁷²⁰ Certain individuals suggested that the “partying” atmosphere at the Seidman Center was partly explained by FDIC employees hired out of college and beginning their careers at the FDIC by attending training at the Seidman Center.⁷²¹ The Seidman Center has been likened to a “dorm”

⁷¹⁰ Witness 642; Witness 422; Witness 163; Witness 72.

⁷¹¹ Witness 642.

⁷¹² Witness 504.

⁷¹³ Witness 610.

⁷¹⁴ Witness 182; Witness 218.

⁷¹⁵ Witness 248.

⁷¹⁶ Witness 363.

⁷¹⁷ Report, “Root Cause Analysis” Section.

⁷¹⁸ Witness 450; Witness 694; Witness 642; *Join the FDIC as a Financial Institution Specialist*, <https://www.fdic.gov/about/careers/fis.html> (last visited Apr. 14, 2024).

⁷¹⁹ FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL, *Examiner Education Office*, <https://www.ffiec.gov/exam/info.htm> (last visited Apr. 15, 2024); Witness 672; Witness 637.

⁷²⁰ Witness 220; Witness 694; Witness 531; Witness 385; Witness 642.

⁷²¹ Witness 464; Witness 220; Witness 450; Witness 531.

where the lines between college and the workplace are “blurred.”⁷²² Some FDIC employees described a pattern at the Seidman Center of people engaging in “excessive drinking” to the point where people “got drunk,” vomited, and/or would pass out.⁷²³ FDIC employees cited examples of employees often being “hungover” when attending classes.⁷²⁴ A number of FDIC employees specified that a lot of the drinking took place on the rooftop of the Seidman Center.⁷²⁵ Some FDIC employees said they had knowledge of others using the per diem that they were allotted by the FDIC to buy alcohol.⁷²⁶

Certain FDIC employees have reported being sexually harassed at the Seidman Center, including being subject to unwanted advances⁷²⁷ and/or [REDACTED]⁷²⁸ or gifts.⁷²⁹ Some of these incidents are discussed more fully below in “Examples of Allegations of Interpersonal Misconduct” in Appendix A of the Report. In addition, two individuals used our hotline to report allegations of sexual assault at the Seidman Center, one relating to herself and another relating to others (although no underlying records or additional information regarding these allegations were produced to us from the DOA records system).⁷³⁰

There have been two official reports of sexual assaults at the Seidman Center, but we were unable to determine if they overlap with the two reported to our hotline based on the information available to us. A March 2024 article reported that in February 2017, Arlington County Police responded to a report of a rape at the Seidman Center.⁷³¹ The police response was confirmed by an Arlington County Police record that we received in response to a FOIA request for police documents relating to nonconsensual sexual encounters, sexual assaults, or rapes at the Seidman Center from January 1, 2014 to March 2024. In response to document requests to the FDIC for records related to the February 2017 incident, the Legal Division stated that it did not have records of the incident because the matter was handled by the Office of Inspector General since it involved an allegation of criminal activity. The FDIC’s Office of Inspector General said that Arlington County Police investigated the allegation and reached out to them for assistance in obtaining certain records and speaking to personnel, but ultimately no charges were filed because the claims could not be substantiated by law enforcement. In response to the same FOIA request, Arlington County Police identified a second incident, but would not provide any additional information about it. The Office of Inspector General also identified a second incident relating to an alleged sexual assault at the

⁷²² Witness 464.

⁷²³ Witness 282; Witness 385; Witness 318; Witness 443; Witness 694; Witness 237.

⁷²⁴ Witness 642; Witness 631.

⁷²⁵ Witness 375; Witness 359; Witness 435; Witness 450.

⁷²⁶ Witness 642; Witness 529; Witness 694.

⁷²⁷ Witness 404.

⁷²⁸ *Labor Employee Relations Case Tracker* (LERCT). Redactions have been made to certain descriptions in the public version of this Report to comply with the Privacy Act, preserve anonymity and respect due process rights.

⁷²⁹ Witness 605.

⁷³⁰ Witness 509; Hotline Anonymous Form Submission (Feb. 21, 2024).

⁷³¹ Jason Cohen, EXCLUSIVE: Police Responded To Rape Report At FDIC Hotel Known For Booze-Fueled Parties, THE DAILY CALLER, Mar. 7, 2024.

Seidman Center, but they did not provide additional information to us on the basis that their investigation into that incident is still ongoing.

The FDIC provided us with records related to certain other incidents at the Seidman Center maintained in a DOA record-keeping system. The FDIC provided information about the following incidents documented in the record keeping system from 2014 to 2023. There were 20 occasions on which “guests of the SRC were found to have been intoxicated, suspected o[f] drinking, belligerent to security and/or hotel staff, or in some other manner were disorderly and disruptive to normal hotel and/or workplace operations.”⁷³² And, there were four noise complaints, disturbances, arrests, or incidents involving the police that took place at or around the Seidman Center or that involved guests of the Seidman Center and their visitors.⁷³³ Information about these 24 incidents is summarized as follows:

Number of Incidents	Incident Included
2	Arrests by Arlington County Police ⁷³⁴
6	Response by or involvement of Arlington County Police ⁷³⁵
3	Involvement of EMS or other medical attention ⁷³⁶
3	Actual or possible physical altercations involving FDIC employees, guests, and/or security ⁷³⁷
4	Individuals who were unconscious or asleep in public areas at the Seidman Center ⁷³⁸
3	Property damage or soiling ⁷³⁹

⁷³² *Ten (10) Year Summary of SRC / VASQ Disorderly Incidents 2014-2023* (Oct. 2023).

⁷³³ *FDIC Security Services Incident Report* (Apr. 2014); *FDIC Security Services Incident Report* (Mar. 2016); *FDIC Security Services Incident Report* (Aug. 2018); *FDIC Security Services Incident Report* (Apr. 2019).

⁷³⁴ *Screenshot from Perspective database* (Aug. 2016); *Incident Report* (Feb. 2014).

⁷³⁵ The six incidents with a response by or involvement of Arlington County Police include the two incidents involving arrests referenced in the first row of the table above. *Screenshot from Perspective database* (Oct. 2017); *FDIC Security Services Incident Report* (Oct. 2017); *Screenshot from Perspective database* (Aug. 2016); *FDIC Security Services Incident Report* (Sept. 2014); *Incident Report* (Feb. 2014); *FDIC Security Services Incident Report* (Aug. 2018).

⁷³⁶ *Incident Summary* (Undated); *FDIC Security Services Incident Report* (Apr. 2019); *FDIC Security Services Incident Report* (Aug. 2018).

⁷³⁷ *FDIC Security Services Incident Report* (Oct. 2017); *FDIC Security Services Incident Report* (Sept. 2014); *Incident Report* (Feb. 2014).

⁷³⁸ *FDIC Security Incident Report* (Nov. 2019); Email from Investigation File re: Medical Incident (May 30, 2019); *FDIC Security Services Incident Report* (Mar. 2016); *FDIC Security Services Incident Report* (Aug. 2015).

⁷³⁹ *FDIC Security Incident Report* (June 2022); *Incident Notes* (undated); *FDIC Security Services Incident Report* (Oct. 2017).

Examples of these 24 incidents, [REDACTED] of which involved potential disciplinary action according to FDIC records, include:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] ⁷⁴⁰ [REDACTED] ⁷⁴¹
- [REDACTED]
[REDACTED] The arrest was confirmed in public court records. ⁷⁴²
- [REDACTED]
[REDACTED] ⁷⁴³
- [REDACTED]
[REDACTED] ⁷⁴⁴ [REDACTED]
[REDACTED] ⁷⁴⁵
- [REDACTED]
[REDACTED] ⁷⁴⁶ [REDACTED]
[REDACTED] ⁷⁴⁷
- [REDACTED]
[REDACTED] ⁷⁴⁸

⁷⁴⁰ ARLINGTON GENERAL DISTRICT COURT, *Traffic/Criminal Case Details* (Feb. 2014); ARLINGTON COUNTY POLICE DEPARTMENT, *Incident Report* (undated); *Incident Report* (Feb. 2014); *Incident Statement* (Feb. 2014); Email from Investigation File re: FDIC Security Incident on 2.13.14 (Feb. 20, 2014); Email from Investigation File re: FDIC Security Incident on 2.13.14 (Feb. 26, 2014).

⁷⁴¹ *Corporate Human Resources Information System*.

⁷⁴² *Screenshot from Perspective database* (Aug. 2016); ARLINGTON COUNTY POLICE DEPARTMENT, *Notice Forbidding Trespassing* (Aug. 2016); ARLINGTON GENERAL DISTRICT COURT, *Traffic/Criminal Case Details* (Aug. 2016).

⁷⁴³ *Incident Notes* (Apr. 2017); Email from Investigation File re: Incident at Seidman Center (May 23, 2017); *Screenshot from Perspective* (May 2017); *Screenshot from Perspective database* (Apr. 2017).

⁷⁴⁴ *Screenshots from Perspective database* (July 2017).

⁷⁴⁵ *LER Disciplinary Actions Query* (July 2020).

⁷⁴⁶ Email from Investigation File re: Medical Incident (May 30, 2019).

⁷⁴⁷ Email from Investigation File re: Follow up: May 29th Incident (June 18, 2019).

⁷⁴⁸ *FDIC Security Incident Report* (Nov. 2019).

- [REDACTED] 749
[REDACTED] 750
- [REDACTED] 751
- [REDACTED] 752

Not all FDIC employees had these types of experiences at the Seidman Center. Many said that while there was drinking at the Seidman Center, it was not excessive or “disruptive.”⁷⁵³ Many also stated that they are unaware of partying or that the Seidman Center is not a “rowdy” place.⁷⁵⁴ A few FDIC employees gave their view that there is not much the FDIC can do to control the partying behavior, including of young people.⁷⁵⁵ Others described the Seidman Center as “just like any other hotel” and being “lowkey,” “unassuming,” and “a huge benefit.”⁷⁵⁶

* * *

The culture issues discussed above represent significant risk factors that increase the likelihood that individuals will experience sexual harassment, discrimination, and other forms of interpersonal misconduct and that they will not report it. In fact, when looking at the culture at the FDIC holistically, many of the risk factors that the Equal Employment Opportunity Commission has identified for harassment are present: a relatively homogenous workforce; a workplace where some employees do not conform to workplace norms, *i.e.*, single-sex dominated workplace cultures; many young adult employees; workplaces with “high value employees”; workplaces with significant power disparities; workplaces that tolerate or encourage alcohol consumption; and decentralized workplaces with corporate offices removed physically and/or organizationally from front-line employees or first-line supervisors.⁷⁵⁷ As discussed directly below, we have found that these risks have materialized at the FDIC.

⁷⁴⁹ *FDIC Security Incident Report* (Dec. 2019); Email from Investigation File re: Incident Summary (Dec. 10, 2019).

⁷⁵⁰ *Step Two Grievance Response* (Apr. 22, 2020).

⁷⁵¹ *Incident Notes* (undated).

⁷⁵² *FDIC Security Incident Report* (June 2022).

⁷⁵³ Witness 654; Witness 373; Witness 637; Witness 679.

⁷⁵⁴ Witness 342; Witness 326; Witness 517; Witness 484.

⁷⁵⁵ Witness 450; Witness 431.

⁷⁵⁶ Witness 528; Witness 401; Witness 458; Witness 431.

⁷⁵⁷ U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Chart of Risk Factors for Harassment and Responsiveness Strategies*, <https://www.eeoc.gov/chart-risk-factors-harassment-and-responsive-strategies> (last visited Apr. 22, 2024).

IV. Allegations of Interpersonal Misconduct

In our review, we received hotline reports of numerous allegations of different types of interpersonal misconduct that has occurred at the FDIC over the years. Below, we provide the approximate number of individuals who reported direct experiences with different types of interpersonal misconduct, along with the number of incidents of each type of alleged misconduct. The number of individuals who reported is different from the number of incidents because some of the individuals reported more than one incident. Because various individuals reported different types of misconduct that were sometimes overlapping or difficult to characterize, the following numbers are estimates.

Of the 510 hotline reports that related to subjects that we determined were subjects that fell within the scope of our review:

- 97 individuals reported 145 separate incidents of sexual assaults, unwelcome sexual advances, unwanted touching and attention, and other verbal and physical conduct of a sexual nature, as well as the pursuit of romantic relationships with subordinates;
- 91 additional individuals reported 141 separate incidents of gender or sexuality-based discrimination that did not fall into the sexual harassment-related categories above;
- 187 individuals reported 320 separate incidents of workplace bullying, threats, and other verbal abuse; and
- 191 individuals reported 295 separate incidents of other forms of discrimination (other than gender-based, which are listed above), including in the following categories: race and national origin (113 individuals reporting 142 incidents); age (40 individuals reporting 43 incidents); religion (16 individuals reporting 18 incidents); parental status (33 individuals reporting 35 incidents); ability (33 individuals reporting 37 incidents); veteran status (6 individuals reporting 6 incidents); and other, including allegations of nepotism or political affiliation, or unspecified allegations of discrimination (14 individuals reporting 14 incidents).

As noted, many of the reports involved allegations of more than one incident and more than one type of interpersonal misconduct.

Although many of the allegations came from the regional or field offices, including all six regional offices and over 30 field offices, they also came from headquarters as well. The allegations arose in various Divisions throughout the agency, including the following: the Division of Complex Institution Supervision and Resolution, Division of Depositor and Consumer Protection, Division of Insurance and Research, Division of Information Technology, Division of Administration, Division of Finance, Division of Resolutions and Receiverships, Office of Minority and Women Inclusion, and Division of Risk Management Supervision. It is worth noting that a number of the managers currently

participating in the Action Plan have themselves been subjects of allegations that have been reported to us through our hotline.

In addition to the numerous specific allegations of harassment, discrimination, and other workplace misconduct reported through the hotline, Employee Resource Groups (“ERGs”) and other employees also described to us systemic issues relating to individuals with disabilities being more vulnerable to harassment;⁷⁵⁸ LGBTQIA employees experiencing harassment at work;⁷⁵⁹ and employees facing inappropriate behavior from managers, colleagues, bankers, and others.⁷⁶⁰ ERGs also described fewer opportunities for promotion and underrepresentation at the senior levels among Black employees,⁷⁶¹ Asian American and Pacific Islander employees,⁷⁶² and Hispanic employees.⁷⁶³ These groups, as well as groups representing women, noted disparate treatment for those from underrepresented groups in assignments and career development opportunities.⁷⁶⁴

As it would be impractical to list and describe all of the allegations of workplace misconduct that we have learned about through the hotline, additional interviews, and review of the FDIC’s records, we set forth below descriptions of a number of examples to illustrate the types of allegations that have been raised. The selected examples cover a range of conduct across the FDIC’s Divisions and Offices and are organized below into allegations that fall into the following categories: (1) sexual harassment and relationships with subordinates; (2) gender-based discrimination; (3) other forms of harassment (including bullying); and (4) other forms of discrimination. In terms of numbers, in each category, there were many more reports made of these types and we include the descriptions below as representative examples. As a number of the examples reflect, some of the allegations cover a number of overlapping categories of misconduct.

Certain of the allegations were reported and investigated internally, while most were not. Others, even if not internally reported, were corroborated through other witnesses, while some remain as simply allegations. Many individuals who reported incidents to us, but had not done so internally, noted that they feared retaliation. Although some of the allegations related to conduct from years ago, many have occurred recently, within the last few years, and some within the last few weeks. While certain of the reports were made by former FDIC employees, most of the reports came from current employees. In order to protect their identities, we have not disclosed below specific names of individuals involved, and in certain circumstances, kept other potentially identifying information even more general.

⁷⁵⁸ Witness 265.

⁷⁵⁹ Witness 700.

⁷⁶⁰ *A3P Memo to the Special Review Committee* (Dec. 2023).

⁷⁶¹ *A3P Memo to the Special Review Committee* (Dec. 2023).

⁷⁶² Witness 357.

⁷⁶³ Witness 366.

⁷⁶⁴ *A3P Memo to the Special Review Committee* (Dec. 2023); Witness 275; Partnership of Women in the Workplace (“POWW”) Deck (Dec. 2023).

Additional detail and descriptions about these examples are set forth in “Examples of Allegations of Interpersonal Misconduct” in Appendix A of the Report.

(1) Allegations of Sexual Harassment and Relationships with Subordinates

- One FDIC employee reported to us how she feared for her own physical safety after a more senior colleague who had been stalking her continued to text her even after she made a complaint against him for, among other things, sending unwelcome sexualized text messages that feature partially naked women engaging in sexual acts.⁷⁶⁵
- Another reported to us how her supervisor, discussing difficulties he and his wife were having conceiving a child, had said to her with a smile and looking directly at her, “I know I technically can’t ask you [to be a surrogate] since I’m your boss.”⁷⁶⁶
- Another, while on detail in a field office, reported receiving a picture of an FDIC senior examiner’s private parts out of the blue, only to be told later by others in that field office that she should stay away from him because he had a “reputation.”⁷⁶⁷
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁷⁶⁸
- [REDACTED]
[REDACTED]
[REDACTED].⁷⁶⁹
- An employee reported to us that a former executive in headquarters grabbed her and rubbed himself on her after a happy hour.⁷⁷⁰
- An employee told us about comments by her supervisor, including a suggestion that she had been used to “lure” a male colleague to join the team, that devalued her contributions and demeaned her.⁷⁷¹

⁷⁶⁵ Witness 605.

⁷⁶⁶ Witness 72.

⁷⁶⁷ Witness 602.

⁷⁶⁸ Report of Investigation (Feb. 23, 2024).

⁷⁶⁹ Report of Investigation (Jan. 11, 2024).

⁷⁷⁰ Witness 280.

⁷⁷¹ Witness 604.

- Two noncommissioned examiners reported to us how a commissioned examiner asked them whether they shaved their legs and told them jokes with sexual innuendos, while telling them if they complained, “remember who is giving you feedback” and that they had to pay their dues.⁷⁷²
- An employee told us that a colleague had been harassing her for 18 months, including by monitoring her social media and on one occasion calling her almost 30 times, but she hesitated to report her colleague’s behavior due to “the well-known lack of responsiveness to harassment complaints and potential for retribution,” as well as “out of fear it could adversely impact” her division’s and the FDIC’s operations.⁷⁷³
- Employees told us about sexualized comments and gestures by an executive in the past couple of years, including looking a colleague up and down in a way that made her very uncomfortable, and making a comment about her appearance.⁷⁷⁴
- An individual reported how an executive gave her unwelcome attention, which other colleagues also noticed, including offering to let her use his massage gun, and later became angered by her rejection and retaliated against her.⁷⁷⁵
- An employee told us about how an executive, after they had met for lunch to discuss her request that he serve as her sponsor for a program, asked how far away she lives and suggested, “we can get there and back before the end of the day.”⁷⁷⁶
- Two individuals told us about how a commissioned examiner interacted with them when they were noncommissioned examiners, including asking one of them questions about her relationship status, leaving her comments on social media, and complimenting her “way past the point of [her] feeling comfortable.”⁷⁷⁷
- An employee reported that for a period of three years, a more senior examiner would “sexualiz[e] [her] every time he could,” and he behaved similarly with other colleagues and bank employees, including asking to see photos of their daughters and asking if they were single.⁷⁷⁸

⁷⁷² Witness 498; Witness 523.

⁷⁷³ Witness 136.

⁷⁷⁴ Witness 296; Witness 482; Witness 630.

⁷⁷⁵ Witness 446; Witness 274.

⁷⁷⁶ Witness 497.

⁷⁷⁷ Witness 486; Witness 259.

⁷⁷⁸ Witness 397.

- Two employees told us about a more senior examiner going to brothels with colleagues during work trips, which was well known in the office, with some colleagues joking that visiting prostitutes was the more senior examiner’s “hobby.”⁷⁷⁹
- Multiple employees told us about several executives who were known to pursue subordinates and have relationships with subordinates, including one that had produced a child, and were promoted to other executive positions or moved around to different regions or divisions, instead of being subject to any discipline.⁷⁸⁰

(2) Other Allegations Including Gender-Based Discrimination

- Women in one field office reported to us routinely having endured comments from their supervisor about their breasts and legs, his sex life, and rankings of women colleagues based on appearance.⁷⁸¹
- Several employees told us about a manager’s discriminatory treatment of women, including trying to “shut [women] up during meetings,” at least in one instance advising men, not women, to be prepared to advocate for a bonus, and not awarding bonuses to any women during recent bonus cycles.⁷⁸²
- An employee reported that a woman outside of the FDIC involved in an exam, after saying she would be unavailable for a follow-up review because she was expecting a baby around then, was told “[w]ell maybe if you had kept your legs closed, you would be able to help out.”⁷⁸³
- Individuals told us that a Field Office Supervisor made homophobic comments, including referring to gay men as “little girls,”⁷⁸⁴ and had combative relationships with men who were gay, which was so well-known that one gay man in the office hid this fact because he thought, “I

⁷⁷⁹ Witness 363; Witness 602.

⁷⁸⁰ Witness 489; Witness 382; Witness 567; Witness 427; Witness 658; Witness 199; Witness 472; Witness 622; Witness 386; Witness 477; Witness 623; Witness 613; Witness 460; Witness 422; Witness 535; Witness 563; Witness 518; Witness 401; Witness 458; Witness 312; Witness 352; Witness 490; Witness 281; Witness 481; Witness 529; Witness 251; Witness 333; Witness 673; Witness 403; Witness 459; Witness 362; Witness 471; Witness 416; Witness 302; Witness 324; Witness 374; Witness 191; Witness 313; Witness 451; Witness 190; Witness 306; Witness 582; Witness 639; Witness 391; Witness 566; Witness 534; Witness 577; Witness 564; Witness 585; Witness 379; Witness 246; Witness 610; Witness 649; Witness 443; Witness 502; Witness 690; Witness 260; Witness 419; Witness 669; Witness 487; Witness 557; Witness 121.

⁷⁸¹ Witness 605; Witness 602; Witness 449.

⁷⁸² Witness 330; Witness 180; Witness 540; Witness 573.

⁷⁸³ Witness 306.

⁷⁸⁴ Witness 359; Witness 653; Witness 451.

better not be gay in this office or I'll have the same dynamic [another gay employee] and the Field Office Supervisor have.”⁷⁸⁵

- An individual reported that after he wrote a letter in 2010 to an executive stating his concern that the FDIC’s “reputation is at risk” and detailing incidents when PRIDE month was described as “National Pervert Month” and a woman examiner was described as “like a grizzly bear with tits,” among others, he was relocated to another office while the employees whose conduct he described stayed in the office, and some even received promotions.⁷⁸⁶

(3) Allegations of Other Forms of Harassment

- An employee told us about fearing for her physical safety after she sent an email to her supervisor’s first-line supervisor and her supervisor threatened her “if [she] ever [sent] something like that through email again.”⁷⁸⁷
- Several employees reported that the executive team in their division has pushed out certain employees and taken pride in firing them, assigned managers to positions where they were “put on a shelf and isolated” and given busy work, and established a culture in which employees are afraid they may be punished if they do not fall in line or if they simply ask why a particular direction is being proposed.⁷⁸⁸
- An employee reported to us about his former supervisor bullying members of the team, including heckling and mocking a colleague during a presentation. As he explained, the former supervisor “did this in front of his boss; who do you call?”⁷⁸⁹
- An executive left a highly inappropriate voicemail for an employee reporting up to that executive who had made a mistake, which another executive who listened to the voicemail described as “shocking” and “completely inappropriate ... for a fairly benign mistake.”⁷⁹⁰
- Employees reported to us that after a manager threatened to fight another colleague, an executive who witnessed the incident (and was friends

⁷⁸⁵ Witness 359.

⁷⁸⁶ Witness 331.

⁷⁸⁷ Witness 358.

⁷⁸⁸ Witness 576; Witness 372; Witness 290; Witness 252; Witness 260; Witness 271.

⁷⁸⁹ Witness 409; Witness 561.

⁷⁹⁰ Witness 296, Witness 561.

with the manager) made the colleague who was threatened, but not the manager, apologize.⁷⁹¹

- An individual told us that her manager called her unprofessional and an embarrassment to the FDIC, after the individual moved a meeting back a couple of hours, and later told the individual while the individual was out sick for a week that the individual was showing a lack of teamwork and was letting her teammates down, a lack of judgment and time management because her sick leave was interfering with the completion of her work, and a lack of accountability for not accepting her part in delaying a bank exam due to her illness.⁷⁹²
- An individual reported to us that a colleague would make her the “butt of everyone’s jokes,” making comments such as “[d]o you want to work with this complete idiot or do you want to go to lunch” and telling her once in a room full of people that she was “the stupidest examiner in our entire office.”⁷⁹³

(4) Allegations of Race-Based Discrimination

- A Hispanic employee reported to us that early on in their career, they were subjected to comments such as “What’s the FDIC doing hiring people who can’t speak English?” and were asked by a colleague to recite the Pledge of Allegiance to prove that they were American.⁷⁹⁴
- Two employees told us about a supervisor’s treatment of two Asian women, including having one of them, who was “very experienced” and a “great resource for the team,” shadow a junior male colleague and “always [having] something negative to say” about the work done by the other woman, who was “talented” in her field and “one of the best in the agency.”⁷⁹⁵
- A Black individual reported to us his experiences after starting at the FDIC as a noncommissioned examiner, including being told to “read the manual” or that his supervisor was busy when he asked questions, while the White noncommissioned examiners were “extended a warm welcome” and “offer[ed] step-by-step instructions and expertise.”⁷⁹⁶
- An employee reported anonymously to us that after starting at the FDIC a few years ago, they were told that they were only hired because of the

⁷⁹¹ Witness 297; Witness 646.

⁷⁹² Witness 678.

⁷⁹³ Witness 230.

⁷⁹⁴ Witness 226.

⁷⁹⁵ Witness 690; Witness 380.

⁷⁹⁶ Witness 232.

lack of members of underrepresented groups in the area, and since then they only got the “grunt work,” they were constantly left out of the conversation, they were excluded from meetings, they were not treated as a member of the team, and they heard several colleagues openly comment that those colleagues did not like working with members of underrepresented groups.⁷⁹⁷

- A Black employee reported to us that she was told incorrectly, before she took and passed the exam to become a commissioned bank examiner, that no Black employee had passed the exam on the first try and the only way Black employees became commissioned examiners was through completing individual development plans, and she routinely applied for promotions and was passed over in favor of White colleagues.⁷⁹⁸
- A Hispanic employee reported to us experiences including being told, together with the other Hispanic employees who started with him at the FDIC, that they were “token” hires or there “for a quota” and a colleague often using members of underrepresented groups to discuss examples of fraud or misconduct at a bank, such as “A Hispanic teller is the insider in the bank and assisting her Hispanic friends to get information about the bank.”⁷⁹⁹
- An employee reported anonymously to us that within a few months of starting at the FDIC, they asked to transfer to another office because of racial bias, including noncommissioned examiners from underrepresented groups being slowed down or not being provided the same opportunities as White noncommissioned examiners, and they have continued to experience discriminatory treatment, including being passed over for promotion by colleagues who are less qualified and have less experience.⁸⁰⁰

(5) Allegations of Other Forms of Discrimination

- An employee told us how her supervisor treated her poorly “for being a working mom,” including complaining about the leave time she took and giving her frequent travel assignments, which she thought were intended to drive her to quit. Another employee told us that the same supervisor told her he did not want “another woman with young kids [in a supervisory position] because [he] need[ed] to get some work done.”⁸⁰¹

⁷⁹⁷ Witness 219.

⁷⁹⁸ Witness 497.

⁷⁹⁹ Witness 485.

⁸⁰⁰ Witness 334.

⁸⁰¹ Witness 476; Witness 244.

- Individuals told us about the experiences of women (in particular women who have children) in two offices in a region, including being subjected to comments such as “you’re a mother now, you don’t belong in the workplace.”⁸⁰²
- An employee reported to us anonymously about their challenges receiving reasonable accommodation and their reluctance to file a complaint because after making a complaint earlier in their career, they had a “target on [their] back” and were forced to relocate.⁸⁰³

V. Policies, Procedures, Training, and Reporting Channels

Through our review, we have also reached certain findings with respect to the FDIC’s policies, procedures, training, and reporting channels. FDIC employees have consistently expressed experiencing a lack of clarity regarding the scope and application of the FDIC’s policies and procedures regarding sexual harassment, discrimination, and other forms of interpersonal misconduct. Many employees were not aware that the relevant policies and procedures existed, or where to find and review them. Others expressed frustration that these policies and procedures were difficult to understand and apply in real life. In particular, many employees did not have a sufficient understanding of how relevant conduct was defined by the FDIC policies or how to report such conduct. Even those in supervisory roles, and Division of Administration’s Labor and Employee Relations Section (“LERS”) and the Legal Division’s Labor, Employment, and Administration Section (“LEAS”) who are responsible for the implementation of such policies and procedures, expressed that the Anti-Harassment Policy in particular is vaguely written.⁸⁰⁴ One supervisor noted that there seem to be “clear gaps in people’s knowledge” about policies the higher up you went in the FDIC management chain.⁸⁰⁵

FDIC employees have also conveyed that the trainings corresponding to the relevant policies and procedures are ineffective, due to their non-interactive and non-illustrative nature. Employees shared that many of the current trainings are virtual and “click-through”⁸⁰⁶ or “check-the-box,”⁸⁰⁷ without educating employees on how to practically identify and report relevant misconduct. One employee described the FDIC’s current trainings as “minimal, at best.”⁸⁰⁸ Employees expressed a desire for more trainings that were in-person and interactive, with nuanced examples.⁸⁰⁹ Others expressed a desire for trainings that address how to better manage and respectfully interact with others, including mandatory trainings

⁸⁰² Witness 202; Witness 27; Witness 376; Witness 438.

⁸⁰³ Witness 82.

⁸⁰⁴ Witness 431; Witness 348.

⁸⁰⁵ Witness 360.

⁸⁰⁶ Witness 473; Witness 653; Witness 257; Witness 475.

⁸⁰⁷ Witness 410.

⁸⁰⁸ Witness 431.

⁸⁰⁹ Witness 431; Witness 628; Witness 475; Witness 473; Witness 488.

addressing inclusive leadership, emotional intelligence, sensitivity, and implicit bias.⁸¹⁰ We find these perspectives and criticisms to be well founded.

With respect to the reporting channels, employees expressed confusion about how the various reporting channels interacted with each other and what types of misconduct could be reported to each channel. Even supervisors, and employees in Human Resources, LERS, and LEAS—those responsible for operating these reporting channels—said they found it difficult to navigate the multiple reporting systems, and said that it can be confusing for employees to figure out how and where to report.⁸¹¹ In some instances, there was misinformation about the nature of a reporting channel, leading an employee to use the wrong reporting channel and to lose certain remedial options as a result.

There were also others with concerns about a lack of neutrality of those investigating allegations. These concerns were largely three-fold. Preliminarily, almost all reporting channels involve management.⁸¹² Employees who did not have good relationships with their managers and supervisors, or were trying to file a complaint against them, would inevitably interact with their managers and supervisors during the complaint process.⁸¹³ Other employees identified that the Office of Minority and Women Inclusion (“OMWI”) and LERS and LEAS, which head up the formal reporting channels, are on the side of management (and in the case of LEAS, defends the corporation against any potential lawsuit). In fact, some LERS specialists acknowledged that it was fair for employees to perceive them as being conflicted.⁸¹⁴ Other employees identified concerns about the conflict of interest when filing complaints against individuals within OMWI and LERS and LEAS, who themselves are involved in the reporting channels.⁸¹⁵ While the FDIC has a conflict of interest policy under which Equal Employment Opportunity (“EEO”) complaints against OMWI managers and the Chairman are outsourced to another agency (or the Legal Division), no such policy exists for complaints against non-manager OMWI employees, individuals in LERS or LEAS, or other senior management. It also does not cover the Anti-Harassment Policy, and the existence of the policy is not widely known.⁸¹⁶ We find that the concerns about the credibility and neutrality of the reporting channels are also well founded.

Further, and importantly, as noted above, there is widespread fear of retaliation for reporting misconduct,⁸¹⁷ as well as a perception that an employee will be labeled a “troublemaker” if they do raise concerns.⁸¹⁸ One employee said that “if you cause trouble [by

⁸¹⁰ Witness 690; Witness 473; Witness 202; Witness 656.

⁸¹¹ Witness 503; Witness 575.

⁸¹² Witness 303; Witness 450.

⁸¹³ Witness 622; Witness 413.

⁸¹⁴ Witness 333; Witness 326.

⁸¹⁵ Witness 636; Witness 652; Witness 421.

⁸¹⁶ Witness 321.

⁸¹⁷ Witness 376; Witness 307; Witness 669; Witness 24; Witness 82; Witness 385; Witness 268; Witness 452; Witness 290; Witness 244; Witness 201; Witness 305; Witness 674; Witness 315; Witness 602; Witness 82; Witness 678.

⁸¹⁸ Witness 574; Witness 391; Witness 674; Witness 229.

reporting someone] you'll be the first to be shipped to Timbuktu and won't get promoted.”⁸¹⁹ Many expressed fear of receiving “crappy assignments and crappy jobs”⁸²⁰ if they spoke up, and others expressed fear of altogether losing their jobs for reporting misconduct.⁸²¹ Part of this fear stemmed from a lack of trust in the reporting channels, including whether reporting misconduct would actually lead to accountability.⁸²² Employees identified that the FDIC has a strong aversion to litigation risk, resulting in a lack of discipline for wrongdoers.⁸²³ One employee said that it was so rare for the FDIC to terminate an employee based on sexual harassment, discrimination, or other interpersonal misconduct, that they believed “it would be an act of Congress to get someone fired.”⁸²⁴ Another said that, “it is not comfortable for anyone to file a complaint at the FDIC, it would detonate their career.”⁸²⁵ The overall lack of faith in the reporting channels has, in turn, had a chilling effect on reporting.⁸²⁶ We conclude that these investigation processes and the resulting disciplinary action are insufficient to protect FDIC employees and do not sufficiently hold employees who violate these policies accountable.

A. Policies, Procedures, and Trainings

FDIC employees have consistently expressed experiencing a lack of clarity regarding the scope and application of the FDIC's policies and procedures regarding relevant conduct. In particular, employees expressed that they were confused about what types of conduct fell within the FDIC's definition of harassment.⁸²⁷ This included whether certain conduct met the legal definition of harassment, although the Anti-Harassment Policy states that conduct need not rise to the legal definition of harassment under Title VII to be considered harassment at the FDIC.⁸²⁸ Even managers and supervisors tasked with executing parts of the relevant policies did not fully understand the definitions of harassment, leading to ineffective handling of, or guidance on, how to report such conduct.⁸²⁹ And employees in LERS and LEAS found the Anti-Harassment Policy in particular to be vaguely written.⁸³⁰ In addition, supervisors and managers said that the lack of clarity in policies and procedures leads to different parts of the organization—OMWI, LERS and LEAS, the Union, the Internal Ombudsman—to push allegations back and forth to one another without any resolution.⁸³¹

The trainings on the relevant policies and procedures were reported to be equally unilluminating. FDIC employees described the trainings as insufficient—in terms of

⁸¹⁹ Witness 574; Witness 391; Witness 674; Witness 229.

⁸²⁰ Witness 574.

⁸²¹ Witness 421; Witness 391.

⁸²² Witness 413.

⁸²³ Witness 517; Witness 219; Witness 653; Witness 312; Witness 188.

⁸²⁴ Witness 391.

⁸²⁵ Witness 620.

⁸²⁶ Witness 253; Witness 635; Witness 459.

⁸²⁷ Witness 218.

⁸²⁸ *Anti-Harassment Policy 5* (June 2021).

⁸²⁹ Witness 431.

⁸³⁰ Witness 345.

⁸³¹ Witness 335; Witness 444; Witness 449; Witness 575; Witness 194; Witness 400.

frequency and quantity of trainings, as well as the content covered. They are correct. First—the format and content of the trainings were consistently described as ineffective,⁸³² if employees even recalled having done any training at all.⁸³³ Even some employees in LERS and LEAS could not recall ever having taken any training on harassment.⁸³⁴ It is not surprising that many employees struggled to remember the Anti-Harassment Training in particular, because that training is required only once during an employee’s tenure at the FDIC—within 30 days of starting.⁸³⁵ Employees noted that the Anti-Harassment Training is an online, “minimal at best,” “check the box,” and “click-through” training.⁸³⁶ As one supervisor said, “[o]ne thing I know in any training is that if you let me do it online and we can skip to the test... [I am] not learning.”⁸³⁷ Many employees said they wanted in-person, more frequent, and interactive trainings with real life examples.⁸³⁸ Others expressed confusion as to whether the conduct they experienced was required to meet the legal definition of harassment and discrimination to be actionable, and noted the relevant trainings focus a lot on federal case law instead of providing illustrative examples.⁸³⁹

LERS and LEAS, the divisions tasked with investigating misconduct, also lack critical training. Although there is an Investigations SOP, there are no specific, mandatory trainings for LERS specialists or LEAS attorneys on conducting investigations into harassment, discrimination, or other forms of interpersonal misconduct, and they are instead required to rely on prior knowledge or voluntary trainings, sometimes through outside companies.⁸⁴⁰ Employees in LERS and LEAS expressed a desire for more training,⁸⁴¹ as some employees have more substantial experience with such investigations than others.⁸⁴² LERS and LEAS employees also reported not receiving training on the Anti-Harassment Policy, other than the training mandated for all FDIC employees, although they are supposed to understand and implement it.⁸⁴³

More generally, employees also expressed a strong desire to have trainings on a broader range of topics that relate to prevention of harassment, discrimination, and other interpersonal misconduct than is currently offered and mandated. Suggested areas for additional training included empathy in the workplace, inclusive leadership, sensitivity, emotional intelligence, implicit bias, microaggressions, effective communication,

⁸³² Witness 473; Witness 653; Witness 257; Witness 475; Witness 410; Witness 431; Witness 628; Witness 488.

⁸³³ Witness 431; Witness 679.

⁸³⁴ Witness 575; Witness 251.

⁸³⁵ Witness 609; Witness 431.

⁸³⁶ Witness 473; Witness 653; Witness 257; Witness 475; Witness 410; Witness 431; Witness 628; Witness 488.

⁸³⁷ Witness 360.

⁸³⁸ Witness 338; Witness 431; Witness 628; Witness 475; Witness 473; Witness 488.

⁸³⁹ Witness 653.

⁸⁴⁰ Witness 251; Witness 419; Witness 587; Witness 348; Witness 575; Witness 360.

⁸⁴¹ Witness 475; Witness 541; Witness 473; Witness 529; Witness 360; Witness 663.

⁸⁴² Witness 419.

⁸⁴³ Witness 475; Witness 488; Witness 221; Witness 251.

psychological safety, allyship, and team building.⁸⁴⁴ The FDIC currently does not have such mandatory, regular training.

Employees emphasized that additional trainings are needed for FDIC employees at different points in their careers that target specific issues they might confront in the context of harassment, discrimination, and other forms of interpersonal misconduct. For example, a LERS employee noted that new hires would benefit from training during orientation on both acceptable and unacceptable behaviors in the workplace, including what the workplace is.⁸⁴⁵ Other employees emphasized the need for additional training for managers, supervisors, and executives regarding required reporting obligations, emotional intelligence, and interrupting bias, *i.e.*, allyship or bystander training.⁸⁴⁶ Neither the mandatory training for all employees on Workplace DE&I in Action, nor the new mandatory training on empathy, cover such topics in-depth and specific to supervisors.⁸⁴⁷ At present, there are a number of elective trainings on some of these topics offered by Corporate University, but the onus is on the executive to self-enroll in those courses.⁸⁴⁸

To that end, many managers pointed out that the current trainings related to relevant conduct are overly focused on pointing out what employees cannot do, rather than teaching employees the appropriate ways to treat one another.⁸⁴⁹ In fact, several employees noted that most FDIC employees could not identify whether the FDIC had a Code of Conduct and did not recall any training on it.⁸⁵⁰ This should not be the case nor do FDIC employees want it to be. The FDIC employees almost universally expressed a desire and willingness to learn more and do better when it comes to harassment, discrimination, and other forms of interpersonal misconduct and want the FDIC's help from a training perspective to accomplish this.⁸⁵¹

While there was a strong desire amongst FDIC employees for additional training, some employees said that increased training is not enough to remedy issues with the FDIC's culture.⁸⁵² We agree. One employee explained that while he understands "people want to pin the misconduct at the FDIC on the lack of training," he doesn't believe one "ever needs to train an employee not to go to a strip club or put their hands down their pants."⁸⁵³

⁸⁴⁴ Witness 690; Witness 473; Witness 146; Witness 256; Witness 202; Witness 354; Witness 656.

⁸⁴⁵ Witness 455.

⁸⁴⁶ Witness 690; Witness 473; Witness 656.

⁸⁴⁷ Witness 146; Witness 656.

⁸⁴⁸ Witness 645.

⁸⁴⁹ Witness 653.

⁸⁵⁰ Witness 275; Witness 379.

⁸⁵¹ Witness 690; Witness 473; Witness 146; Witness 628.

⁸⁵² Witness 109.

⁸⁵³ Witness 451.

B. Reporting Channels

i. *Office of Minority and Women Inclusion – Anti-Harassment Policy*

Currently, the FDIC's Anti-Harassment Program Coordinator role is filled by the Branch Chief of the Affirmative Employment, Diversity and Inclusion Branch of OMWI, although these two jobs are "two full-time jobs."⁸⁵⁴ There are currently no support staff associated with the Anti-Harassment Program to assist the coordinator to handle incoming complaints and intake.⁸⁵⁵ This leads to delays in responding to employees⁸⁵⁶ as well as in scheduling intake interviews.⁸⁵⁷ This lack of prompt response was a common and fair criticism of the Anti-Harassment Program made by FDIC employees, who expressed they did not receive acknowledgement of their complaint for several weeks⁸⁵⁸ or even months.⁸⁵⁹ Many employees expressed frustration that even after the initial intake, they were never updated as to the status of their complaints, or never heard from the Anti-Harassment Program again.⁸⁶⁰ Many within OMWI, LERS, and LEAS said that the Anti-Harassment Program is currently under-resourced to meet the demands of the FDIC. One employee noted that "we're going to continue having [harassment] until the culture is fixed. For the next 5 years, we need a full-time person to oversee the AHP."⁸⁶¹

Employees have also noted that the coordinator lacks independent authority to determine whether an allegation warrants investigation or to conduct an investigation with neutral investigators, undermining the neutrality and efficacy of the Anti-Harassment Program.⁸⁶² Instead, the Anti-Harassment Policy directs the Anti-Harassment Program Coordinator to turn over any harassment allegations to LERS after initial intake, leaving the decision of whether to investigate or not resting with LERS, LEAS, and management, and the determination of whether conduct rises to the level of harassment with LERS, instead of the Anti-Harassment Program Coordinator. This has left a view amongst some that while "EEO, HR, and Legal [LEAS] are equals" at many other federal agencies, at the FDIC, "Legal [LEAS] runs the organization...[the AHP] can't maintain neutrality if Legal [LEAS] is telling [them] what to do."⁸⁶³ As one LEAS attorney stated, the Anti-Harassment Program Coordinator "just receives the complaints and passes them along. I don't really understand the purpose of the position...."⁸⁶⁴ Many FDIC employees, including in OMWI, LERS, and LEAS, expressed a view that investigations under the Anti-Harassment Program are "not a neutral

⁸⁵⁴ The current FDIC AHPC was not aware that she would be filling the AHPC role until after she had started at the FDIC as Branch Chief.

⁸⁵⁵ Witness 660.

⁸⁵⁶ Witness 660.

⁸⁵⁷ Witness 660.

⁸⁵⁸ Witness 605; Witness 636; Witness 450; Witness 204; Witness 444.

⁸⁵⁹ Witness 583.

⁸⁶⁰ Witness 411; Witness 204; Witness 583.

⁸⁶¹ Witness 660.

⁸⁶² Witness 660; Witness 519.

⁸⁶³ Witness 660.

⁸⁶⁴ Witness 404.

process” given the role played by LERS and LEAS, who advise and represent FDIC management in other important contexts, such as lawsuits and labor negotiations. In fact, in the aftermath of recent press reporting, LEAS requested access to the Anti-Harassment Program hotline mailbox.⁸⁶⁵ The Anti-Harassment Program Coordinator declined to give LEAS access.⁸⁶⁶

Some employees have shared that it would be helpful to have a completely anonymous means of contacting the AHP, as the current methods all require an employee to leave identifying information.⁸⁶⁷ This is critical, as our hotline demonstrates. LERS and LEAS employees also noted the lack of a centralized Anti-Harassment Program complaint system, and said this made it difficult for them to make determinations about next steps consistent with the requirements of the Investigations SOP.⁸⁶⁸ It does not appear that the Anti-Harassment Program maintains a centralized system that allows for searches of historical complaints and tracking of incoming complaints. Without such a system, the Anti-Harassment Program Coordinator is unable to comprehensively follow up with all complainants, nor are they able to synthesize data to see trends in the types of complaints being filed.⁸⁶⁹ Without sufficient record-keeping, transparency and trend spotting are not possible.

ii. Office of Minority and Women Inclusion – Equal Employment Opportunity Process

A significant number of FDIC employees expressed confusion about the EEO complaint channel, including its availability for their specific circumstances and timeline for filing a complaint. It was clear that there was a widespread lack of understanding about the EEO process generally, including the difference between an informal EEO complaint and a formal EEO complaint; as well as the difference between an allegation of harassment made through the AHP in the Affirmative Employment, Diversity and Inclusion Branch and an EEO complaint through the EEO Compliance and Training Branch. An overall distrust of the EEO complaint process was also expressed.

For example, a number of employees expressed that they had misunderstood or had been misinformed about the timeline for filing a complaint, leading them to miss their window to file.⁸⁷⁰ Others expressed that they had been misinformed by other reporting channels that the EEO complaint channel was not available for their specific circumstances, when in fact it may have been.⁸⁷¹ Some others expressed confusion about the difference between an informal versus formal EEO complaint, and shared they were uncomfortable

⁸⁶⁵ Witness 660.

⁸⁶⁶ Witness 660.

⁸⁶⁷ Witness 265.

⁸⁶⁸ Witness 587; Witness 352.

⁸⁶⁹ Witness 660.

⁸⁷⁰ Witness 385; Witness 163; Witness 580; Witness 602; Witness 583.

⁸⁷¹ Witness 449.

finding themselves in mediation across the table from the individual they had accused of discrimination—sometimes their direct supervisors.⁸⁷²

Furthermore, employees expressed distrust with the EEO complaint process, describing first-hand and second-hand accounts of employees who had filed EEO complaints with the expectation of confidentiality, only to have knowledge of their complaint spread widely within their office.⁸⁷³ Some shared that this lack of confidentiality led to subsequent experiences of bullying and retaliation.⁸⁷⁴ One employee alleged she was told by her supervisor, the then-acting head of OMWI, “you dug your grave and now you need to lay in it” after he found out that she had filed an EEO complaint against OMWI management for discrimination.⁸⁷⁵ Another employee said that after filing an EEO complaint, he had difficulty applying for new positions, and was told, “with your past, you’ve created trouble around here, and we don’t want to promote that.” When he asked if this was referring to his EEO complaint, they “shrugged and moved on.”⁸⁷⁶ A few even described feeling as though they had been pushed into a settlement⁸⁷⁷ or withdrew their complaints feeling discouraged after entering into mediation, especially those who had filed cases against their direct supervisors.⁸⁷⁸

iii. Labor and Employee Relations Section and Labor, Employment, and Administration Section

a. Reporting

Although LERS is listed in the Anti-Harassment Policy as a reporting channel, some employees purported not to have awareness of LERS generally, and others were unaware that complaints under the Anti-Harassment Policy are referred to LERS.⁸⁷⁹ LERS specialists reported receiving very few complaints from employees directly.⁸⁸⁰ As noted above, employees expressed a general distrust of LERS, and believe they function to protect management.⁸⁸¹ One LERS specialist acknowledged that their role, which involves advising management on disciplinary actions but also conducting investigations into management, could give the appearance of a conflict of interest. Moreover, by virtue of their role, LERS specialists communicate more frequently with management than employees. That same LERS specialist said LERS’s role in investigations “raise[s] real concerns of bias and objectivity in the investigative process.”⁸⁸² This mistrust in the current reporting channels has clearly led to underreporting of misconduct.

⁸⁷² Witness 236; Witness 624; Witness 304.

⁸⁷³ Witness 184.

⁸⁷⁴ Witness 83.

⁸⁷⁵ Witness 595.

⁸⁷⁶ Witness 421.

⁸⁷⁷ Witness 493; Witness 635; Witness 630.

⁸⁷⁸ Witness 236.

⁸⁷⁹ Witness 71; Witness 681.

⁸⁸⁰ Witness 455.

⁸⁸¹ Witness 219; Witness 355.

⁸⁸² Witness 410.

b. Conducting Investigations

Employees who reported to us harbor a similar distrust of LEAS, who are involved in the investigation of allegations of misconduct but also represent the FDIC if litigation were to stem from that investigation. LEAS ensures that the same LEAS attorney who helped conduct the investigation does not represent the agency in any subsequent litigation and they “do their best to firewall the two attorneys,” but both LEAS attorneys ultimately report to the same manager.⁸⁸³ LEAS also described that it is theoretically possible that a LEAS attorney could advise a supervisor in connection with a misconduct case, and then defend the corporation against that same supervisor in a later, separate case involving their misconduct, but reported that this situation has never occurred in practice.⁸⁸⁴ With LEAS now working across different regions, as well as headquarters, due to the recent significant increase in complaints (further detailed in the “Historical Records Regarding Discrimination, Harassment, and Other Complaints” Section of the Report), at least one LEAS attorney has raised concerns about representing the agency in proceedings after being a witness to a number of investigations across different regions. This LEAS attorney apprised LEAS management that “the lines are getting blurry.”⁸⁸⁵

As noted above, LERS and LEAS have an Investigations SOP that is not published to FDIC employees.⁸⁸⁶ All that is conveyed in writing to FDIC employees about the conduct of investigations is contained in the Anti-Harassment Policy and the MOU, which provided only that, if the appropriate management official, LERS, and LEAS decide investigation of the allegations is appropriate, they initiate an investigation no later than 10 calendar days of receiving the report of harassment, that a LEAS attorney and LERS specialist will be assigned once a request for an investigation has been made, that LEAS will supervise the investigation, and that LERS and LEAS will collaborate on decisions regarding the investigation.⁸⁸⁷

Further, LERS and LEAS both reported that the Investigations SOP, which represents that it contains best practices for conducting investigations of harassment and other interpersonal misconduct, contains broad language and is not followed on a consistent basis. For example, the Investigations SOP does not specify whether complainants should be interviewed.⁸⁸⁸ Some LERS specialists always start the investigation by interviewing complainants, and others do not.⁸⁸⁹ In some cases, the complainant is not interviewed at all.⁸⁹⁰ One complainant was told there was no basis to conduct an investigation into her complaint, despite never speaking to the LERS specialist.⁸⁹¹ Another noted that the LERS specialist interviewed the respondent, but only took written electronic statements over email from the

⁸⁸³ Witness 333.

⁸⁸⁴ Witness 333.

⁸⁸⁵ Witness 404.

⁸⁸⁶ *SOP Conducting Management-Initiated Investigations* (Dec. 2020).

⁸⁸⁷ LERS AND LEAS, *Memorandum of Understanding* (May 2020).

⁸⁸⁸ *SOP Conducting Management-Initiated Investigations* (Dec. 2020).

⁸⁸⁹ Witness 529; Witness 360; Witness 673.

⁸⁹⁰ Witness 673; Witness 348; Witness 626; Witness 321.

⁸⁹¹ Witness 369.

complainants and witnesses.⁸⁹² A LERS specialist noted that he does not interview complainants in cases involving “sensitive” allegations.⁸⁹³

A LEAS attorney said that some LERS specialists do not have much experience questioning witnesses and “sometimes LERS sticks to the script” and does not ask necessary follow-up questions.⁸⁹⁴ For example, LEAS recently removed a LERS specialist from an investigation because they wanted an attorney in the room asking “pointed follow-up questions.”⁸⁹⁵ Some described, in situations where complainants were interviewed, “victim-blaming questions”⁸⁹⁶ from LERS specialists. For example, some complainants described being pointedly asked why they did not report their claim sooner, or why they did not ask the respondent to stop engaging in the misconduct.⁸⁹⁷

LERS specialists are also not provided with consistent training on how to conduct investigations.⁸⁹⁸ The lack of clear written procedures for investigations and the lack of training has led to doubts about the ability of some LERS specialists and their level of performance.⁸⁹⁹ One LEAS attorney reported that their own level of involvement in investigations is dependent on the skill-level of the LERS specialist that is assigned to the case.⁹⁰⁰

Timeliness of investigations was another concern, and one that was acknowledged by LERS and LEAS. A LEAS attorney said that timeliness of investigations “is the most significant issue we need to fix.” He said that some LERS work product requires a complete rewrite by LEAS, which further extends investigations.⁹⁰¹ Employees described slow response times, lack of follow-up and lack of updates from LERS and LEAS during the investigatory process.⁹⁰² For example, one recent investigation took over 6 months, and employees that were interviewed were provided little to no updates regarding the status of the investigation during that time.⁹⁰³

While the Anti-Harassment Policy provides that the individuals involved in an investigation and the information they provide in connection with the investigation will be “kept confidential to the extent possible,”⁹⁰⁴ what this means in practice is not widely understood by FDIC employees. Some LERS and LEAS specialists said that they inform employees that confidentiality cannot be guaranteed because of due process concerns, which is

⁸⁹² Witness 626.

⁸⁹³ Witness 348.

⁸⁹⁴ Witness 404.

⁸⁹⁵ Witness 281.

⁸⁹⁶ Witness 503.

⁸⁹⁷ Witness 605; Witness 486.

⁸⁹⁸ Witness 419.

⁸⁹⁹ Witness 428; Witness 487; Witness 527.

⁹⁰⁰ Witness 601.

⁹⁰¹ Witness 333.

⁹⁰² Witness 333; Witness 583.

⁹⁰³ Witness 449.

⁹⁰⁴ *Anti-Harassment Policy* 8 (June 2021).

reflected in the Anti-Harassment Policy.⁹⁰⁵ But, this does not appear to be a consistent practice. There are examples of employees not being apprised of this until after their interview was complete, and not being told what specifically could be shared with the subject of their complaint, including a full transcript of their interview, if disciplinary action is taken that is subject to certain processes under the Collective Bargaining Agreement between the FDIC and NTEU.⁹⁰⁶ And it is not clear what instruction, if any, LERS or LEAS gives to those being interviewed about sharing questions that were asked in the interview.⁹⁰⁷ This appears to have contributed in some part to complaints becoming more widely known.

LERS specialists described difficulties with LEAS's involvement in investigations and coordination too. LERS specialists pointed to LEAS personnel "taking over investigations" and approaching witnesses with a "confrontational tone."⁹⁰⁸ The hotline contained descriptions of potential victim-blaming during interviews. One LERS specialist said that, in their experience, LEAS advice always overrode LERS advice, including with respect to whether and what type of investigation to conduct.⁹⁰⁹ And, critically, some LEAS attorneys acknowledged that following the recent press they are more willing to conduct investigations on cases they would have been less willing to in the past, and are giving more employees "the benefit of the doubt."⁹¹⁰

The difficulties between LERS and LEAS are long-standing, having resulted in the Memorandum of Understanding between LERS and LEAS. In fact, at one point in time, a proposal was considered to have LERS report to LEAS. The proposal was ultimately rejected, in part because of a recognition that LERS and LEAS serve very different functions and require different skill sets such that making one supervise the other did not seem feasible at that time.⁹¹¹ The process of considering this proposal seems to have exacerbated tensions between the groups. As one LEAS attorney stated, regarding this tension, "at this point, we haven't resolved it to my satisfaction."⁹¹² And another FDIC employee within DOA described the relationship between LEAS and LERS as "frenemies." That same employee reported that there is still a "disconnect" between the two groups.⁹¹³ As one LERS specialist remarked with respect to the Memorandum of Understanding, "[i]t's not worth the paper that it is written on because we don't follow it."⁹¹⁴ This tension directly impacts those who raise complaints, or are being investigated or are witnesses in investigations, because it causes investigations to not be completed in a timely manner⁹¹⁵ and because it contributes to a view amongst FDIC employees that the system for addressing misconduct is ineffective. In sum, it appears that

⁹⁰⁵ Witness 348.

⁹⁰⁶ Witness 605.

⁹⁰⁷ Witness 601.

⁹⁰⁸ Witness 673.

⁹⁰⁹ Witness 475.

⁹¹⁰ Witness 404.

⁹¹¹ LERS AND LEAS, *Assessment of Whether to Merge LERS Under LEAS Deck* (Nov. 2019).

⁹¹² Witness 333.

⁹¹³ Witness 459.

⁹¹⁴ Witness 587.

⁹¹⁵ Witness 333.

LERS and LEAS are not operating effectively and efficiently, together or separately, partly due to ongoing tension and frustration between the two groups.

Finally, there were concerns raised about how LERS chooses to frame investigations and/or who gets investigated for what. LERS specialists raised concerns regarding what they perceived to be “interference” by executives in DOA in the investigatory process in ways that may contribute to a perception that the process is biased or inconsistent. For example, a LERS specialist reported being removed from a case after she had conducted an investigation because she was “too emotional,”⁹¹⁶ another reported recommending removal for misconduct and an executive mitigating the penalty to a demotion,⁹¹⁷ and another said an executive changed a proposed removal to a settlement.⁹¹⁸ Other LERS specialists reported investigations not being done or being stopped from being completed to avoid a record of disciplinary action.⁹¹⁹ The lack of disciplinary action means that there is no record to rely upon to support progressive discipline in the case of a repeat offender. It also contributes to the view at the FDIC that wrongdoers are not punished or sufficiently punished, described further in the “Factual Findings, Workplace Culture, Settlements and Discipline” Sections of the Report.

In each of the situations, the LERS specialist’s impression was that there was favoritism potentially involved and/or a desire to protect the FDIC from further litigation risk. As one LERS specialist put it, “[i]f [this executive] didn’t like them, he would make it more severe. If it was someone close to him, he swept it under the rug.”⁹²⁰ For example, several employees described a human resources executive who was aggressive⁹²¹ and a “bully.”⁹²²

[REDACTED]
[REDACTED].⁹²³ This human resources executive was reassigned without any discipline on the ground that “the reassignment was sufficient.”⁹²⁴ Other employees observing this outcome remarked that the executive who made the decision not to have the investigation cover interpersonal misconduct allegations and to reassign the employee told others on multiple occasions that he “love[d]” this person and thought she was “great.”⁹²⁵ These examples raise serious questions about whether the investigation process is being conducted fairly.

c. Concluding Investigations

At the conclusion of an investigation, the Investigations SOP requires that a report on the investigation be prepared. The Investigations SOP specifically requires that this report not contain any conclusions regarding whether FDIC policies or the law was violated or any recommendations, and only “conclude (*i.e.*, find facts) that persuasive evidence exists to

⁹¹⁶ Witness 475; Witness 245; Witness 421.

⁹¹⁷ Witness 673; Witness 421.

⁹¹⁸ Witness 673; Witness 419.

⁹¹⁹ Witness 673.

⁹²⁰ Witness 421.

⁹²¹ Witness 630.

⁹²² Witness 195.

⁹²³ [REDACTED]

⁹²⁴ Witness 419; Witness 379.

⁹²⁵ Witness 475.

confirm or refute that a particular alleged action or event did (or did not) transpire.”⁹²⁶ Any conclusions regarding violations of policies or law and recommendations are only discussed orally and, if there is disciplinary action taken, may become part of the notice provided to the disciplined employee from the management official who decided the discipline.⁹²⁷ A senior official in DOA said reports of investigation do not contain conclusions because “our concern is to deal with the harasser and we don’t need an internal determination to do that...the conduct speaks for itself.”⁹²⁸

All parties to these decisions described difficulties in coming to decisions that adequately protected the complainant, appropriately respected the rights of those under consideration for discipline, and factored in risks to the FDIC overall. Individuals within LERS described pushback from management in some circumstances regarding taking what LERS viewed as appropriately severe discipline. One LERS specialist described management expressing concern against taking action against an employee involved in interpersonal misconduct because the employee has a lot of experience and is a good performer. The specialist noted, “when it comes to sexual harassment of this magnitude, it has been very trying to convince management of a strong penalty.”⁹²⁹ Individuals in management who have worked with LERS and LEAS on investigations reported receiving what they believed to be overly conservative advice that favored less severe discipline to avoid potential litigation from the disciplined employee. Individuals in management described LEAS as requiring that the evidence be “beyond a reasonable doubt” to support discipline and that the investigation had to establish that the person was “really, really guilty.”⁹³⁰ Another expressed their frustration with the process: “Having such a fear of letting someone go and then being sued just sets the bar so high, what do you do? . . . The amount of documentation required on the management side is unbelievable. The amount of work it takes is so exhausting.”⁹³¹ A senior official within DOA stated that it is difficult to discipline federal employees, especially senior federal employees, and “it’s just easier” for management to transfer them rather than take more serious disciplinary measures.⁹³² One LEAS attorney described being in the role of presenting management with a range of options and the risks associated with such options and having management choose the most “conservative” option. He described management and LERS as not “want[ing] to deal with the hassle and likely lawsuits after removing someone.” He also said, “the message to be less conservative needs to come from someone other than LEAS/LERS.”⁹³³

The impact of this overall more risk averse approach based on the combined input of LEAS, LERS, and management is particularly troubling when it leads to an employee having a role change or relocation, but not a grade or pay change, due to an investigation’s findings. Individuals within LEAS, LERS, and management all acknowledged that this

⁹²⁶ *SOP Conducting Management-Initiated Investigations* 11 (Dec. 2020).

⁹²⁷ Witness 348.

⁹²⁸ Witness 379.

⁹²⁹ Witness 673.

⁹³⁰ Witness 441.

⁹³¹ Witness 649.

⁹³² Witness 379.

⁹³³ Witness 333.

outcome may create a situation in which FDIC employees fairly view there being not “much of a punishment” for harassment and discrimination because individuals are getting the same pay for having to do less work, although others noted that no longer being a supervisor was a career limiting consequence.⁹³⁴ As one LERS employee said, “I cannot think of any instance where the FDIC was too harsh in imposing discipline” but they could think of “cases where [the FDIC] did not impose sufficiently severe discipline.”⁹³⁵

Another concern with the process for concluding investigations that has repeatedly been raised about LERS and LEAS is the way in which they, alongside management, have weighted the various Douglas factors (described in further detail in “Applicable Legal Standards” in Appendix B of the Report) in the consideration of appropriate discipline. Individuals within LERS, LEAS, and management, along with many rank and file FDIC employees, pointed to situations in which the fact that an FDIC employee was “doing a good job” (*i.e.*, the employee’s past work record) factored heavily into the disciplinary decision, more so than the seriousness of the offense, for example.⁹³⁶ As one LERS specialist framed it, “[w]e tolerate behaviors we shouldn’t because the employee is deemed to be good at their job.”⁹³⁷ An employee from OMWI stated, “if a person is a great examiner, outside of harassment, [the agency] is going to let you harass people because you’re doing a good job. We’re going to overlook that little thing, because you’re doing a great job.”⁹³⁸ In addition, some LERS specialists pointed to the importance of considering, in the disciplinary decision-making process, whether a person was in a managerial role because managers “should be held to a higher standard, and the discipline should be elevated in severity because of their management position.”⁹³⁹ It is not clear that the FDIC has taken this approach, and there are examples of the opposite seeming to be the case, as described in the “Factual Findings, Settlements and Discipline” Section of the Report.

In addition, individuals within LERS and LEAS also acknowledged that despite the requirements of the Anti-Harassment Policy,⁹⁴⁰ they have not consistently notified complainants or respondents that investigations were complete.⁹⁴¹ In addition, even when LERS and LEAS do inform individuals that an investigation is complete, they provide no detail regarding the conclusion of the investigation except for the fact that it has been concluded, due to fears of violating the Privacy Act.⁹⁴² While some individuals in LERS believe that this is the only approach consistent with the Privacy Act,⁹⁴³ others noted that the Privacy Act is only triggered by disclosure of actual discipline and that employees can be told that the FDIC has “taken appropriate action,” signaling that the allegations were viewed as substantiated.⁹⁴⁴

⁹³⁴ Witness 281.

⁹³⁵ Witness 281.

⁹³⁶ Witness 660.

⁹³⁷ Witness 475.

⁹³⁸ Witness 660.

⁹³⁹ Witness 541.

⁹⁴⁰ *Anti-Harassment Policy* 8 (June 2021).

⁹⁴¹ Witness 475.

⁹⁴² Witness 475; Witness 256; Witness 674; Witness 281.

⁹⁴³ Witness 490; Witness 475.

⁹⁴⁴ Witness 333; Witness 281.

Notably, one FDIC employee pointed out that in the wake of recent public reporting on the arrest of an FDIC employee, the FDIC had disclosed prior disciplinary action taken against this employee.⁹⁴⁵

Finally, there is no current process in place to monitor the impact of discipline on behavior. For example, there is no check-in with complainants after discipline has been implemented to see if the behavior has ceased or improved and to inquire as to whether any retaliatory action has been taken against the complainant. Individuals in LERS said that this was a gap as to which there “should be some sort of control in place.”⁹⁴⁶

d. Recordkeeping

A lack of uniform and consistent recordkeeping practices also impacts the ability of LERS and LEAS to perform their job duties effectively. LERS had for many years saved case files in file rooms and individual folders, either on their desktop or through a shared drive.⁹⁴⁷ In response to our document requests, LERS searched for relevant complaints by having LERS specialists conduct manual searches of their personal computers and network folders.⁹⁴⁸ To the extent that information is maintained in centralized databases, individual users have different and inconsistent practices for using these databases.⁹⁴⁹ For example, a LERS specialist reported that the different specialists made individual determinations about what information to maintain in the databases that LERS has used at different times to track complaints and about how to organize information in the databases.⁹⁵⁰ Moreover, prior to the spring of 2023, LERS did not track which cases involved sexual harassment or hostile work environment allegations, as well as whether they were within the scope of the FDIC’s Anti-Harassment Policy.

Interviewees acknowledged challenges with the recordkeeping. Regional LERS specialists reported having little insight into how other regions maintained records.⁹⁵¹ OIG recently performed an audit on the Labor Employee Relations Case Tracker (“LERCT”), and the creator of the system did not know whether it accounted for any of the recommendations from the OIG 2020 Sexual Harassment Report because he was not employed at the FDIC at the time or made aware of them.⁹⁵² LERS specialists also did not know whether the Investigations database within LERCT was accurate and said they needed a better tracking system.⁹⁵³ One called it a “very bad” and “cumbersome” tracking system, and also noted that it lumped

⁹⁴⁵ Witness 404.

⁹⁴⁶ Witness 333.

⁹⁴⁷ Witness 251, Witness 541, Witness 575, Witness 379.

⁹⁴⁸ *FDIC Independent Review – Document Collection Form, LERS* (Feb. 2024).

⁹⁴⁹ Witness 475.

⁹⁵⁰ Witness 475.

⁹⁵¹ Witness 575; Witness 410.

⁹⁵² Witness 488.

⁹⁵³ Witness 410; Witness 529.

harassment into other categories.⁹⁵⁴ A LEAS attorney said that LERCT is not “agile” and does not get updated in a timely manner.⁹⁵⁵

LEAS similarly acknowledged that the Legal Division’s ALIS matter management system is not updated in a timely manner and cannot be relied upon for up-to-date information on cases. For example, a LEAS attorney stated that ALIS is “not necessarily the best system for an up to the minute update at any time.” That same attorney noted that LEAS management had recently mandated that LEAS keep a running list of ongoing investigations separate from the database.⁹⁵⁶

VI. Settlements and Discipline

Over the course of the review, FDIC employees have raised concerns about accountability for sexual harassment, discrimination, and other forms of interpersonal misconduct, as discussed above. This includes reports that “nothing is done”⁹⁵⁷ in response to complaints about such misconduct, or that employees involved in interpersonal misconduct are not sufficiently disciplined. Factual findings regarding certain of the FDIC’s settlements of matters involving allegations of interpersonal misconduct and disciplinary actions relating to such matters are summarized below. Examples of responses to interpersonal misconduct that illustrate the concerns raised, and of more severe responses to other types of misconduct, are also provided.

A. Settlements

We requested from the FDIC settlement agreements in matters involving allegations of sexual harassment or interpersonal misconduct, including but not limited to discrimination, for the period from January 2008 to the present. LEAS produced about 195 settlement agreements in response to this request.

To identify settlement agreements responsive to the request, LEAS searched a repository that is used to store centrally electronic copies of settlement agreements from 2018 to the present; hard copy files of documents that had been retained by prior LEAS Assistant General Counsels; and the files of individual attorneys in the Section. Settlement agreements involving employees considered to be high-level officials were maintained separately from the other settlement agreements and were not maintained in a systematic way.⁹⁵⁸

In general, the settlement agreements produced by LEAS relate to EEO complaints, grievances, Merit Systems Protection Board (“MSPB”) proceedings, or civil litigation. The settlement terms included salary increases, monetary payments, transfers to different positions, detail opportunities, assignment of mentors, participation in training, revisions to performance ratings, changes to disciplinary actions, and agreements to resign or retire. Of the settlement agreements with individuals, approximately 100 settlement agreements included a lump sum payment, attorney’s fees and costs, or an achievement award.

⁹⁵⁴ Witness 673.

⁹⁵⁵ Witness 333.

⁹⁵⁶ Witness 333.

⁹⁵⁷ Witness 577.

⁹⁵⁸ Witness 333.

The lump sum payments ranged from \$200 to \$305,000. Attorney’s fees and costs ranged from \$1,000 to about \$290,000. The achievement awards ranged from \$500 to \$5,000. As discussed in the “Prior Programs, Reports, and Surveys Relating to Workplace Culture, 2013 Global Settlement Addressing Discriminatory Pay Programs” Section of the Report, the FDIC also reached settlement agreements with the National Treasury Employees Union (“NTEU”) to settle national grievances and arbitrations brought by NTEU on behalf of certain classes of bargaining unit employees. The first of these agreements was reached on February 13, 2013, and the FDIC agreed to settle the claims for \$2.9 million, \$290,000 of which was to be used for attorney’s fees. The second was reached on September 18, 2023, and the FDIC agreed to pay \$300,000 to settle those claims.

The lack of uniform and consistent recordkeeping practices for records relating to complaints of interpersonal misconduct impacted our ability to identify relevant settlement agreements. Settlement agreements were not maintained in a system or manner that made them readily searchable based on types of misconduct involved or alleged. On at least two occasions, settlement agreements that the FDIC entered into with employees as a result of interpersonal misconduct made no reference to the complaints against the employees. In addition, the settlement agreements stated that the personnel action was a “voluntary change” made by the employee for “personal reasons” or at the “employee’s request.”⁹⁵⁹ It was thus difficult to ascertain which settlements related to claims of harassment, discrimination or interpersonal misconduct or discipline for the same without having further information, such as from our hotline.

B. Discipline

We requested that the FDIC provide all documents relating to disciplinary decisions, including transfers, concerning any allegations of sexual harassment or interpersonal misconduct for the period from January 2008 to the present.

LERS produced case files that include disciplinary records. LERS searched for documents to respond to our requests through manual searches by LERS specialists of their personal computers and network folders for the period from 2017 to the present.⁹⁶⁰ As discussed above in the “Historical Records Regarding Discrimination, Harassment, and Other Complaints, Internal Records” Section of the Report, in response to our document requests the FDIC produced certain exports from the systems used by LERS.

The lack of uniform and consistent recordkeeping practices found with records relating to complaints of interpersonal misconduct impacted our ability to identify relevant disciplinary decisions. The information available in the disciplinary records and exports of the databases shows a range of disciplinary actions imposed by the FDIC in relation to allegations of sexual harassment or interpersonal misconduct. Certain employees who

[REDACTED]
[REDACTED]
[REDACTED]⁹⁶¹ Employees [REDACTED]
[REDACTED]

⁹⁵⁹ March 6, 2014 *Settlement Agreement*; December 1, 2023 *Settlement Agreement*.

⁹⁶⁰ LERS represented that documents from the period before 2017 were not available.

⁹⁶¹ LERS, *CHRIS Employee Relations Cases Spreadsheet* rows 18, 19, 24–25, 32, 329 (undated).

.⁹⁶² Employees who [REDACTED]
[REDACTED] .⁹⁶³ More recently, in March, [REDACTED]
[REDACTED] ⁹⁶⁴

i. *Examples of Responses to Interpersonal Misconduct*

Example 1

[REDACTED]
[REDACTED] .⁹⁶⁵ [REDACTED]
[REDACTED]
[REDACTED] ⁹⁶⁶

Example 2

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] .⁹⁶⁷

Example 3

[REDACTED]
[REDACTED]
[REDACTED] .⁹⁶⁸ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] .⁹⁶⁹

⁹⁶² LERS, *CHRIS Employee Relations Cases Spreadsheet* rows 345, 348, 529, 689 (undated); LERS, *Case Tracker* row 235 (Mar. 11, 2024).

⁹⁶³ LERS, *CHRIS Employee Relations Cases Spreadsheet* rows 192, 319, 582, 617, 618, 622, 623, 722, 1190, 1329 (undated).

⁹⁶⁴ [REDACTED]

⁹⁶⁵ LERS, *Report of Investigation 1* (Sept. 26, 2023).

⁹⁶⁶ *Memorandum of Agreement and General Release 1* (undated).

⁹⁶⁷ U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Settlement Agreement and General Release 1, 2* (May 6, 2020).

⁹⁶⁸ *Adverse Action Proposal 1, 4* (Jan. 29, 2014).

⁹⁶⁹ *Settlement Agreement 1–2, 4* (Mar. 6, 2024).

ii. *Examples of Responses to Other Types of Misconduct*

Example 1

[REDACTED]⁹⁷⁰
[REDACTED]⁹⁷¹
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁹⁷² The same executive is the subject of allegations of interpersonal misconduct discussed above in “Allegations of Interpersonal Misconduct.”

Example 2

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁹⁷³
[REDACTED]

Example 3

Around 2010 or 2011, the FDIC investigated a Field Office Supervisor after he was caught making misrepresentations during the course of bank exams. Action was taken such that this individual left the FDIC shortly following that incident. Several employees believe he was able to resign before facing any disciplinary action.⁹⁷⁴

VII. Institutional Response to Recent Publicity Including Action Plan

The FDIC started to learn, in approximately June 2023, that a reporter from the *Wall Street Journal* was contacting FDIC employees from the San Francisco field office about a potential article.⁹⁷⁵ Regional leadership in San Francisco became aware of the outreach and reported it up to certain division leaders and the Office of Communications. As time passed, the FDIC and its leadership learned that the reporting concerned sexual harassment, as well as toxic environment and workplace culture issues more generally in the agency as a whole.⁹⁷⁶ Behind the scenes, the FDIC leadership began to formulate responses and work on understanding what they knew about the topics of the reporting. They sought to conduct a review of certain relevant policies and procedures, and gather data and information around the

⁹⁷⁰ Witness 333.

⁹⁷¹ Witness 673.

⁹⁷² [REDACTED]

⁹⁷³ *Notice of Decision – Proposed Suspension 1* (Nov. 15, 2023).

⁹⁷⁴ Witness 669; Witness 306; Witness 334; Witness 567; Witness 552.

⁹⁷⁵ Email re: Wall Street Journal Reporter (June 21, 2023).

⁹⁷⁶ Email re: Wall Street Journal Reporter (June 21, 2023); Email re: Wall Street Journal story on FDIC Culture (Oct. 3, 2023).

issues.⁹⁷⁷ In doing so and in subsequent efforts, they found that obtaining relevant data on harassment-related allegations and reports was challenging.⁹⁷⁸ The first *Wall Street Journal* article was published on November 13, 2023, followed by a number of articles describing the FDIC’s response, as well as additional subjects, including relating to Chairman Gruenberg and his conduct.

After the initial *Wall Street Journal* articles were published in November 2023, there was some disagreement among agency leadership as to what the posture of the response and initiatives should be. The discussion appeared to be whether the FDIC, including the Chair himself, should focus on demonstrating empathy for employees’ concerns and taking responsibility for what happened or instead take a position that could be described as somewhat removed.⁹⁷⁹ Certain direct reports encouraged the Chair to communicate directly with employees, show empathy, and take responsibility, instead of only relying on the Division Directors for this.⁹⁸⁰ In particular, one of the Chair’s direct reports felt strongly about making the experiences of the employees and those who were harmed the main priority of the agency’s response.⁹⁸¹ For example, this direct report was a strong advocate of including compensatory damages in the agency’s Action Plan.⁹⁸² The Chair explained that he agreed he needed to take responsibility and speak to employees directly, which is why he made a statement in a recorded video that was sent to the entire agency.⁹⁸³ One direct report characterized the various views somewhat differently—there were those who wanted to “get to the bottom” of the allegations while continuing to focus on the agency’s work and mission and there was one direct report who wanted to “stop working” and focus mainly on fixing the wrongs.⁹⁸⁴

Ultimately, the agency adopted a response posture in which it acknowledged the experiences that victims had and demonstrated a willingness to improve, as detailed below, but that was also defensive in other respects. For example, a draft response to the *Wall Street Journal* prior to the publication of the first article focused heavily on retention statistics, steps the FDIC took to prevent harassment and inappropriate behavior, and the low number of reported cases of sexual harassment.⁹⁸⁵ And, talking points the FDIC drafted for managers to respond to questions on the *Wall Street Journal* articles also highlighted training and retention as “efforts” the FDIC made to “support employees.”⁹⁸⁶ Other specific actions the FDIC took in response to the *Wall Street Journal* articles, some of which are ongoing, include:

⁹⁷⁷ Email re: Sexual Harassment Policy Review (Sept. 13, 2023); Email re: Sexual Harassment Strategy (Sept. 26, 2023); *Draft Response to Wall Street Journal* (2023).

⁹⁷⁸ Email re: Chairman Request for Information (Dec. 6, 2023); *Draft Response to Wall Street Journal* (2023); Witness 200; Email re: Reviews of DCP cases (Dec. 6, 2023); Email re: DCP Reassignments (Dec. 4, 2023); Email re: Reviews of DCP Cases (Dec. 1, 2023).

⁹⁷⁹ Witness 235; Witness 296; Witness 502; Witness 489.

⁹⁸⁰ Witness 296; Witness 235; Witness 502.

⁹⁸¹ Witness 362; Witness 566; Witness 489.

⁹⁸² Email re: FDIC Action Plan (Nov. 29, 2023).

⁹⁸³ Interview of M. Gruenberg.

⁹⁸⁴ Witness 362.

⁹⁸⁵ *Draft Response to Wall Street Journal* (2023).

⁹⁸⁶ *Script for Employee Video regarding Wall Street Journal Article and Talking Points for Managers Receiving Employee Questions* (2023).

- Putting in place an action plan at the request of EEOC.⁹⁸⁷
- Organizing “listening tours” in Atlanta, Dallas, New York, and San Francisco in which high-ranking FDIC executives, including the Chair, meet in-person with regional offices for “town hall” type meetings.⁹⁸⁸ During these listening tours, there generally was an all-staff portion followed by additional smaller sessions.⁹⁸⁹
- Conducting intra-Division-specific meetings to discuss the public reporting and the related allegations, which all Divisions were encouraged to do.⁹⁹⁰ In addition, the Chair has met with Employee Resource Groups.⁹⁹¹ The Chair and others involved in the response to the allegations received input from the Employee Resource Groups during those discussions.⁹⁹²
- In-person training on sexual harassment by EEOC for every FDIC employee.⁹⁹³

In December 2023, at the request of EEOC following the *Wall Street Journal* articles regarding sexual harassment and harassment issues at the FDIC, the FDIC issued an Action Plan for a Safe, Fair, and Inclusive Work Environment (the “Action Plan”).⁹⁹⁴ In developing the Action Plan, the FDIC leadership drew heavily from information and suggestions provided by the Partnership of Women in the Workplace (“POWW”).⁹⁹⁵ The Action Plan includes 34 goals with varying deadlines that range across eight topic areas described below. The FDIC has assigned “Executive Sponsors” to various committees to move forward the goals in each of the topic areas.

(1) **“Support for Victims and Survivors.”** The Action Plan contemplates creating various avenues of support, including establishing a 24-hour hotline to receive reports of harassing behavior and “ensure immediate assistance” for individuals in distress; enhancing free counseling services provided by the FDIC relating to sexual harassment, discrimination, and emotional and mental well-being; connecting victims with external local support groups specializing in sexual harassment support; and establishing a support program to help employees remain “integrated in the workplace” after experiencing harassment.

(2) **“Prompt Investigation, Identification, and Correction of Current Problems.”** The FDIC plans to engage an EEO firm to conduct (a) a barrier analysis to

⁹⁸⁷ Email re: Request for an Action Plan (Nov. 18, 2023).

⁹⁸⁸ Witness 200.

⁹⁸⁹ Interview of M. Gruenberg.

⁹⁹⁰ Witness 489; Witness 548; Witness 200.

⁹⁹¹ Interview of M. Gruenberg.

⁹⁹² Email re Notes (Dec. 1, 2023); Witness 333; Witness 548; Witness 324.

⁹⁹³ Interview of M. Gruenberg.

⁹⁹⁴ *Action Plan for a Safe, Fair, and Inclusive Work Environment* (2023), <https://www.fdic.gov/about/diversity/pdf/action-plan-12-4-23-v1.pdf> (last visited Apr. 21, 2024).

⁹⁹⁵ Witness 333; Witness 605.

identify and recommend a plan to address challenges in “workforce representation”; and (b) a review to identify discriminatory compensation practices.

(3) **“Repercussions for Harasser.”** The Action Plan includes a goal to “ensure consequences” for those found liable for sexual harassment “align with the seriousness of the misconduct” and to assess whether any “aversion to risk,” including litigation risk, is impacting addressing sexual harassment or other “serious misconduct.” The FDIC will “consider” expanding the use of a table of penalties to ensure consistent disciplinary action is applied for similar instances of misconduct. The FDIC will also implement policies, to the extent “legally supportable and feasible,” to enhance due diligence procedures in the hiring process to prohibit the hiring of and payment of bonuses to those who have engaged in sexual harassment or other “serious misconduct.”

(4) **“Leadership Accountability.”** The Action Plan contemplates “enhancing” the FDIC’s centralized tracking system for monitoring sexual harassment claims. It also contemplates updating policies to allow them to withhold bonuses if employees do not implement or follow the Action Plan, and update leadership performance standards to “better support accountability” for sexual harassment detection and prevention. Finally, the Action Plan contemplates that the EEO firm conducting the barrier analysis will present to the Executive Advisory Council, regional directors, chairs of examiner councils, and executive sponsors of ERGs.

(5) **“Policies, Procedures, and Operations Review and Enhancement.”** The Action Plan contemplates updates to several policies and procedures including: the Anti-Harassment Policy, harassment complaints, grievance policies, the FDIC code of conduct, travel policies, exit surveys, and policies relating to the Student Residence Center.

(6) **“Training Programs.”** The Action Plan includes a goal of conducting mandatory “live” sexual harassment training for all employees, managers, and executives, as well as a process to regularly “assess effectiveness” of those trainings. The Action Plan also contemplates requiring training on “preventing and addressing sexual harassment” at orientation for new FDIC employees.

(7) **“Communication and Outreach Strategy.”** The FDIC included goals to develop and implement an internal “communication and outreach strategy” with goals of “informing employees, rebuilding trust..., and transforming culture.” An external strategy would be developed to communicate the “FDIC’s commitment to creating and maintaining a harassment and discrimination-free environment.”

(8) **“Cultural Transformation.”** These goals include creating a taskforce to develop recommendations regarding recruitment and retention of “females in the workforce,” conducting a periodic “culture assessment” to monitor progress and identify areas of improvement, considering providing resources to ERGs and the Chairman’s Diversity Advisory Councils to “improve culture,” considering expanding EEO Counselors to include locations in regional offices, implementing listening sessions, and conducting reviews of offices to ensure compliance with the FDIC’s policies regarding harassment and discrimination.

ROOT CAUSE ANALYSIS

As set forth above, our review has determined that many FDIC employees have suffered from incidents of sexual harassment, discrimination, and other forms of interpersonal misconduct, including conditions that have created a hostile workplace culture. Even if these types of workplace issues may not be unique to the FDIC and do not reflect the conduct or values of many within the FDIC, the sheer volume and nature of the over 500 reports (as the examples set forth above show and in “Examples of Allegations of Interpersonal Misconduct” in Appendix A of the Report) reflect that far too many within the FDIC have experienced or observed such workplace misconduct and suffer from a workplace culture that does not live up to FDIC’s own stated values. Although the nature, severity, and frequency of such misconduct varies among different divisions, regions, and field offices within the FDIC, as well as over time, based on our review and our factual findings set forth above, we find that a number of factors have contributed—as root causes—to the circumstances that allowed these problems to arise and persist.

1. Lack of Accountability: Actual and perceived lack of accountability for workplace misconduct that has led to negative consequences to culture and reporting of issues.

The FDIC suffers from a failure to hold employees accountable for misconduct, including for conduct relating to various forms of harassment, as well as a widespread perception within the agency that wrongdoers are not held to account. This actual and perceived failure to hold individuals accountable has had a number of negative consequences, including a view among employees that certain types of misconduct is condoned and that there is no point (especially when weighed against the risks) in reporting bad behavior. As the utility of reporting is called into question, fewer instances of misconduct get raised through the channels, creating a cycle of even less accountability. Although certain privacy and employment rights afforded federal employees do, as a practical matter, limit the transparency that can be provided to employees and create legal risks around taking firm disciplinary action, they do not fully justify the FDIC’s longstanding inability to hold those who engage in workplace misconduct sufficiently accountable. The lack of faith that wrongdoers will be held to account has also had the effect of creating mistrust among the employees in the disciplinary system generally, including the belief that different standards exist for different employees (e.g., managers versus non-managers) and that favoritism plays a significant role in employment-related decisions.

First, our review has revealed a number of examples over the years of FDIC managers who had been involved in interpersonal misconduct with impunity, including sexual harassment, making inappropriate comments, and engaging in bullying type behavior. Indeed, a number of these individuals were promoted and moved among different divisions and regions, creating the impression that workplace misconduct is not only condoned, but allowed to spread around the organization. For example, as noted above in the “Factual Findings” Section, and in “Examples of Allegations of Interpersonal Misconduct” in Appendix A of the Report, there have been a number of FDIC executives, including former Regional Directors, who had well-known reputations for pursuing and having relationships with FDIC employees, including subordinates, but went on to long careers within the FDIC, moving around and rising to senior levels without consequence. As one bank examiner described it, “[i]t is like a shell

game. No accountability for misbehavior, and oftentimes seems to be rewarded. Many times people are promoted.”⁹⁹⁶ Another examiner said that it was so rare for the FDIC to terminate an employee based on misconduct, that they believed “it would be an act of Congress to get someone fired.”⁹⁹⁷ Our review confirmed this, including that FDIC records reflect that over a nine year period from 2015 to 2023, not a single report to the Anti-Harassment Program resulted in termination, removal, grade reductions or any discipline more serious than a suspension (of which there were only two).⁹⁹⁸

Second, it is important to note that federal privacy and employment-related protections do place limits on the FDIC’s ability to be fully transparent about and forceful in taking disciplinary action against employees alleged to have engaged in misconduct. As outlined in greater detail below in “Applicable Legal Standards” Section in Appendix B of the Report, federal privacy laws place substantial restrictions on the amount of information that can be shared about disciplinary actions taken against federal employees. However, allowing these restrictions to excessively tie their hands, such that complainants have reported feeling that nothing at all is being done with their complaints, has led to insufficient accountability for workplace misconduct. As one executive noted, “confidentiality is different from a lack of transparency, and sometimes one can hide the other.”⁹⁹⁹ In fact, our review revealed that many FDIC employees do not appear to fully understand the limitations that the privacy laws and employee rights place on the organization to take action. Rather, they simply see an institution not taking firm actions (or any action for that matter) against individuals they perceive to be wrongdoers.

Third, because employees do not see individuals alleged to have engaged in misconduct face any consequences (and in some circumstances see them get promoted or relocated), they also develop doubts about the integrity of the disciplinary process itself. Many we have spoken to in our review suspected favoritism where managers who are closer to leadership are protected.¹⁰⁰⁰ This perception of favoritism and protection has been exacerbated by the role Division of Administration’s Labor and Employee Relations Section (“LERS”) and Legal Division’s Labor, Employment, and Administration Section (“LEAS”) play in leading the investigation. Employees have expressed their view that these functions serve as representatives and protectors of FDIC management, and that view is borne out by the fact that, if a dispute were to arise over any of the allegations they are investigating, LEAS would represent the FDIC in any such a matter. And in such a proceeding, they would be working against the interests of the individual who reported the misconduct, including by seeking to minimize or discredit the allegations. As one senior executive noted, “[a]t the end of the day, they work for the FDIC. They work for management. And they will do what they think is best to protect the FDIC. They have the mentality of the FDIC, rather than the mentality of the victim.”¹⁰⁰¹

⁹⁹⁶ Witness 483.

⁹⁹⁷ Witness 391.

⁹⁹⁸ Report, “Historical Records Regarding Discrimination, Harassment, and Other Complaints” Section.

⁹⁹⁹ Witness 653.

¹⁰⁰⁰ Witness 490; Witness 610; Witness 510; Witness 444; Witness 583; Witness 528; Witness 605; Witness 614; Witness 576; Witness 24; Witness 684; Witness 220; Witness 218; Witness 249; Witness 117; Witness 461.

¹⁰⁰¹ Witness 459.

This lack of accountability, both real and perceived, emerged as a significant concern within the FDIC in our review. We also find that it has served as a contributing factor—or root cause—for the problems with sexual harassment, discrimination, and other types of interpersonal misconduct that have been identified. When an organization does not firmly and consistently hold those involved in workplace misconduct accountable, it undermines the culture, sows doubt in the integrity of its processes, and stifles the reporting of misconduct that is a necessary part of improving workplace culture.¹⁰⁰² That is, in part, what we found has happened at the FDIC.

2. Fear of Retaliation: Widespread fear of retaliation that has prevented employees from raising and reporting issues.

In our review, one of the most prevalent and consistently reported concerns expressed by FDIC employees was fear of retaliation. They noted that, because of the significant discretion managers exercise over the work of their subordinates, retaliation within the FDIC can take many forms, including subtle actions that are hard to prove. For example, employees noted that those who reported on their managers with allegations of misconduct generally were labelled as “troublemakers” and received unfavorable treatment in terms of bonuses, work assignments, travel obligations, and other workplace conditions. Indeed, one long-time bank examiner noted that when she first joined the FDIC as a Financial Institution Specialist years ago, she was told by a more senior examiner assigned to train her that “you don’t report, you don’t say anything, because you end up getting fired.”¹⁰⁰³ That advice stuck with her to this day. Another employee who did ultimately file a complaint was told by her supervisor that “[y]ou dug your own grave, and now you need to lay in it... I’m done with you.”¹⁰⁰⁴ Some of the ways in which FDIC employees described this concern and fear about retaliation include:

- “People are afraid to speak up because they see what happened to me [retaliation]. It’s like a slave mentality. You cut off the legs of the slave, to serve as an example.”¹⁰⁰⁵
- “I’m of the view that when someone files an EEO complaint, they get tarnished with a reputation in the company.”¹⁰⁰⁶
- “If you cause trouble [by reporting someone] you’ll be the first to be shipped to Timbuktu and won’t get promoted.” Further, “[i]f you caused trouble or spoke up too much then you wouldn’t be looked upon favorably, whether you were the qualified candidate or not.”¹⁰⁰⁷
- “Everyone knew if you spoke out you would get a bullseye on [your] back. The few people who did speak up are no longer at the agency.”¹⁰⁰⁸

¹⁰⁰² Witness 188; Witness 635.

¹⁰⁰³ Witness 602.

¹⁰⁰⁴ Witness 595.

¹⁰⁰⁵ Witness 262.

¹⁰⁰⁶ Witness 308.

¹⁰⁰⁷ Witness 391.

¹⁰⁰⁸ Witness 524.

Our own efforts to obtain information from employees for our review confirmed this fear and concern about retribution. The vast majority of those who reported into the hotline requested that we treat their information confidentially, and a number reported anonymously in a manner that did not disclose their identity to us. Even some of the most senior leaders of the organization felt comfortable providing certain types of information (particularly those about their superiors, including the Chairman) only on a confidential basis. As one anonymous employee noted in submitting information to the hotline, “the threat of retribution and payback is real, supervisors rule by fear in the FDIC. Nobody trusts those in charge, and even though this is supposedly anonymous, I don’t think anyone trusts this is not getting in the hands of senior execs. I’m using a VPN and someone else’s cell phone to write this. I still fear that talking will come back to haunt me.”¹⁰⁰⁹ Another anonymous individual used a voice changer software to disguise their voice while submitting a hotline report, fearing retaliation if identified.¹⁰¹⁰ A senior executive with decades of experience within the FDIC stated, “I did fear retaliation and I didn’t want to speak to you because I feared retaliation.”¹⁰¹¹

Our review also revealed that the FDIC has not provided sufficiently clear and forceful assurances that reporting misconduct will not lead to any forms of retaliation. Employees we spoke with generally do not recall pronouncements or trainings that have emphasized the importance of not retaliating against those who have reported misconduct. Instead, as noted above, in most circumstances where reports of misconduct had been made, the individual reporting the misconduct was not provided any information and oftentimes not communicated with at all. Although this reticence may have been driven in part by privacy-related concerns, very few, if any, steps seem to have been taken, in any consistent way, to check and ensure that those who had reported misconduct had not experienced retaliation. Privacy restrictions do not present any barriers to taking steps against retaliation. Nor has the FDIC or its leadership consistently encouraged its employees to report allegations of misconduct, as it should. Far from it, as discussed in greater detail below later in this section, the means of reporting misconduct, particularly for conduct that could be considered harassment, has been confusing and challenging to navigate.

The lack of reporting relating to workplace misconduct—including allegations of harassment, discrimination, and bullying—is unquestionably a root cause of the workplace culture issues that the FDIC currently confronts. For the FDIC to effectively make real and sustainable improvements to its current workplace culture, it will have to address these fears and concerns about retaliation and retribution forcefully. Steps must be taken not only to ensure against retaliation, but also to encourage and reward the legitimate reporting of problems.

3. Insufficient Prioritization of Workplace Culture: Lack of sufficient and sustained prioritization and commitment to workplace culture issues over the years.

The FDIC and its leadership have not sufficiently focused on and prioritized workplace culture, and historical efforts to address it have not been sustained in a way to make lasting change. It is not the case, as some have expressed, that problems related to the workplace culture, including with respect to sexual harassment, only became apparent through

¹⁰⁰⁹ Witness 69.

¹⁰¹⁰ Witness 23.

¹⁰¹¹ Witness 566.

recent media reports. There have been prior culture change and improvement initiatives the FDIC had instituted in part because of some of the same issues identified in this Report. Those initiatives include the Culture Change Strategic Plan (“Culture Change Initiative”) in 2008 and the Workplace Excellence Program initiated in 2012. But despite the work of these initiatives, internal groups and surveys have continued to indicate problems and systemic issues with the workplace culture. With an intense focus on its core substantive mission of supervising and examining banks, promoting a positive workplace culture and the proper management of its own people—the individuals on whom the institution relies to perform its mission—have been allowed to suffer in a number of places within the FDIC. As one Division Director observed, “management thinks they manage banks, they don’t see their jobs as managing the people who manage the banks.”¹⁰¹² Moreover, instead of being prioritized, certain of the components within the organization that play important roles in enforcing a positive workplace culture have been places to which non-performing managers are moved. As a result of its failure to show and model commitment to a positive workplace culture, the FDIC leadership’s recent response and proclaimed commitment to addressing harassment and workplace culture have been received by some within the organization as lacking in credibility.

First, the entirety of the FDIC rightfully takes great pride in its important mission of maintaining stability and public confidence in the nation’s financial system. But over the years, its leadership has pursued this mission with a perspective that appears to equate “toughness” with “effectiveness” and with an inadequate focus on management skills that create a positive work environment that allows employees to do their best work. As noted above in the “Factual Findings, Workplace Culture” Section of the Report, a “sink or swim” mentality where individuals are expected to be able to “take the heat or get out of the kitchen”—as some examiners have described—appears to have been pervasive throughout the organization.¹⁰¹³ Moreover, many that we interviewed noted that they believed the FDIC excused misconduct and toxic workplace behavior from employees who were viewed as “smart” or “good examiners.”¹⁰¹⁴ As one employee in Office of Minority and Women Inclusion (“OMWI”) noted, “if a person is a great examiner, outside of harassment, [the agency] is going to let you harass people because you’re doing a good job. We’re going to overlook that little thing, because you’re doing a great job.”¹⁰¹⁵

Second, concerns about the FDIC’s workplace culture did not originate with the recent *Wall Street Journal* articles last year. The challenges with the FDIC’s workplace culture, including issues relating to accountability and certain hostile behavior, have been reported in the Federal Employee Viewpoint Survey (“FEVS” or “FEV survey”) comments and through the Workplace Excellence initiative as noted above.¹⁰¹⁶ Groups within the FDIC also have been alerting the FDIC and its leadership of related issues for some time. Employee Resource Groups have continued to raise issues about disparate treatment and workplace

¹⁰¹² Witness 656.

¹⁰¹³ Witness 21; Witness 271; Witness 206; Witness 232.

¹⁰¹⁴ Witness 255.

¹⁰¹⁵ Witness 660.

¹⁰¹⁶ Report, “Prior Programs, Reports, and Surveys Relating to Workplace Culture” Section.

culture in their meetings with the leadership.¹⁰¹⁷ Moreover, the FEV survey results specifically have reflected a deteriorating morale and increasing dissatisfaction at work in recent years. As noted in greater detail above in the “Prior Programs, Reports, and Surveys Relating to Workplace Culture” Section of the Report, the FDIC dropped from being ranked the best midsize federal agency to work for from 2011 to 2015, to 8th place in 2021, to 17th place in 2022.¹⁰¹⁸ Similar declines have occurred in “favorability” survey results which were at 84% in 2017 to 62% in 2023, with increases in “unfavorable” ratings of 5% in 2017 to 21% in 2023 (a four-fold increase in just six years). Importantly, in July 2020, the FDIC’s Office of Inspector General (“OIG”) issued its report on sexual harassment (“OIG 2020 Sexual Harassment Report”) finding that the FDIC “had not established an adequate sexual harassment prevention program,” and noting that its survey results reflected that there may have been “underreporting of sexual harassment allegations.”¹⁰¹⁹ OIG noted that 38% of those who had experienced sexual harassment had not reported it for “fear of retaliation,” with another 40% of all respondents (including individuals who reported experiencing sexual harassment) saying they “did not know, or were unsure how to report allegations of sexual harassment.”¹⁰²⁰ Our review also revealed that the findings of the OIG 2020 Sexual Harassment Report were not widely reviewed or understood: few had reviewed it and fewer still understood what changes were being made to address the issues raised by it. And a number of the main issues identified in the OIG 2020 Sexual Harassment Report—including concerns about underreporting, fear of retaliation, and inadequate record keeping—continue to remain significant problems today, as noted in this Report.

Third, in addition to the issues raised over time specific to the FDIC from their own employee groups, surveys, and OIG, the FDIC was put on notice of—but did not do enough about—the systemic issues confronting our society at large such as the #MeToo movement in about 2017 and the death of George Floyd in 2020. In fact, starting in 2018, Partnership of Women in the Workplace (“POWW”) made reports to the then-Director of OMWI, asking for training on sexual harassment, in an attempt to address the movement at an agency level.¹⁰²¹ Specifically, POWW had proposed changes to the AHP, including through

¹⁰¹⁷ OMWI-facilitated meeting with the Association of African-American Professionals (A3P) and the Networking Inclusion and Advancement for African-American Women: African-American Women with a Purpose (NIA Women) Employee Resource Groups leaders (Dec. 2018).

¹⁰¹⁸ Partnership for Public Service, *2022 Best Places to Work in the Federal Government Rankings*, <https://bestplacestowork.org/rankings/?view=overall&size=large&category=leadership&> (last visited Apr. 23, 2024).

¹⁰¹⁹ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 11, 17 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

¹⁰²⁰ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 17 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

¹⁰²¹ Partnership of Women in the Workplace Briefing to the Co-Chairs of the Special Review Committee (Dec. 2023); Witness 566; Witness 449.

additional sexual harassment training.¹⁰²² Instead of addressing their concerns, OMWI Director at the time informed them that the changes were “too political.”¹⁰²³

Fourth, our review has revealed that components within the organization that play a role in fostering workplace culture, including the Ombudsman’s Office and Corporate University,¹⁰²⁴ had been used over time as a place to put managers who had—and were reputed to have—performance or conduct-related issues. [REDACTED]

[REDACTED] For many who were aware of this particular individual’s reputation and history, it was received as a message that functions like the Ombudsman were not prioritized by the FDIC and its leadership. Moreover, a number of employees in their reports to us referred to how Corporate University used to be the “dumping ground” for individuals who had engaged in misconduct and were transferred instead of disciplined.¹⁰²⁵ In addition, the parts of the FDIC that played important roles in establishing a positive workplace culture suffered from insufficient resources, failure to recruit and retain employees with requisite qualifications, and cultural and organizational dysfunction.¹⁰²⁶ For example, one senior executive noted that, at the FDIC, there is a budget line item for an investigative contract, but was told that is just “not something that we use.”¹⁰²⁷ Similarly, an OMWI employee stated that, “[the FDIC] is going to continue having these issues until the culture is fixed. For the next 5 years, we need a full time person to oversee th[e] [program], oversee trainings, [and] someone needs to oversee the investigation as a neutral party, because we have no neutral person who is overseeing.”¹⁰²⁸ On top of these resource constraints, existing policies also adversely affect the neutral enforcement of the FDIC’s Anti-Harassment Policy. Indeed, the Anti-Harassment Policy directs the Anti-Harassment Program Coordinator (“AHPC”) to refer any harassment allegations to LERS and LEAS after their initial intake, which endows LERS and LEAS, rather than the Anti-Harassment Program, with the ultimate decision-making authority on whether conduct rises to the level of harassment—and whether to conduct an investigation at all. Together, the lack of commitment and focus on these functions within the organization has reflected a lack of priority placed on them (relative to other parts of the organization viewed more as core to its mission) and has had the effect of exacerbating issues with workplace culture.

Finally, because of the lack of emphasis placed on workplace culture previously, including with respect to sexual harassment issues, the more urgent response to the recent publicity has been perceived by many within the organization as lacking in credibility.¹⁰²⁹ Moreover, a number of the managers currently participating in the Action Plan

¹⁰²² Partnership of Women in the Workplace Briefing to the Co-Chairs of the Special Review Committee (Dec. 2023); Witness 333.

¹⁰²³ Partnership of Women in the Workplace Briefing to the Co-Chairs of the Special Review Committee (Dec. 2023); Witness 333; Witness 566.

¹⁰²⁴ Witness 612; Witness 338; Witness 278; Witness 256; Witness 592; Witness 475; Witness 563.

¹⁰²⁵ Witness 612; Witness 338; Witness 278.

¹⁰²⁶ Report, “Factual Findings” Section.

¹⁰²⁷ Witness 630.

¹⁰²⁸ Witness 660.

¹⁰²⁹ Witness 649; Witness 630; Witness 456; Witness 321; Witness 616; Witness 614.

for a Safe, Fair, and Inclusive Work Environment have themselves been subjects of allegations that have been reported to us through our hotline.¹⁰³⁰ As a result, many reporting to us have questioned the genuineness of the commitment to improving workplace culture and whether the actions merely constitute a “check the box” exercise initiated to address a public relations crisis.¹⁰³¹ Indeed, our review has revealed that, at least initially, certain members of leadership attributed the public reporting and attention on harassment to politics. But whether politics influenced the public reporting or not, our review has revealed that the problems with harassment and workplace culture within the FDIC exist and are real. Thus, a truly credible and effective response will require recognition of past failures and lost opportunities, as well as a recognition that fundamental changes are necessary.

4. Patriarchal, Hierarchic, and Insular Culture: A culture described as “patriarchal,” “hierarchic,” and “insular” with outdated notions of appropriate workplace behavior and interpersonal workplace interactions.

Words most frequently used to describe the culture at the FDIC in the hundreds of interviews we conducted included “patriarchal,”¹⁰³² “hierarchic,”¹⁰³³ and “insular.”¹⁰³⁴ Although the workplace culture varies somewhat by division, region, and office, these particular descriptions emerged consistently and broadly across the organization. As described above more fully in the “Factual Findings, Workplace Culture” Section of the Report, the individuals we interviewed (both through the hotline and through our affirmative outreach) widely recognize the following characteristics: an institution that, while having made progress in terms of gender-diversity over the years (including in the leadership of certain important divisions), continues to retain many aspects of a decades-old male-dominated ethos; a rigidly hierarchic structure that impacts not only the way in which work is done, but interpersonal interactions; and a deeply insular culture maintained and reflected in leaders and managers who have worked for decades at (and often only at) the FDIC. We believe that these aspects of the culture have contributed to the current challenges the FDIC faces relating to harassment, discrimination, and interpersonal misconduct.

Many FDIC employees use the phrase “good old boys”¹⁰³⁵ club to describe the culture within the organization. Although most cited the origins of this culture to a time years ago, when the FDIC—and the financial industry that it regulated generally—was almost entirely White men,¹⁰³⁶ the FDIC has retained many aspects of this culture, even with increased gender and racial diversity in its ranks. This outdated culture appears to be more persistent in the regional and field offices, although even those in FDIC headquarters have noted that there

¹⁰³⁰ Report, “Factual Findings” Section.

¹⁰³¹ Partnership of Women in the Workplace Briefing to the Co-Chairs of the Special Review Committee (Dec. 2023); Heritage of Asian American Pacific Islanders Briefing to the Co-Chairs of the Special Review Committee (Feb. 2024); Association of African-American Professionals Briefing to the Co-Chairs of the Special Review Committee (Dec. 2023); Meeting with CDAC Members (Mar. 2024); Witness 610.

¹⁰³² Witness 435.

¹⁰³³ Witness 679; Witness 325; Witness 660; Interview of M. Gruenberg; Witness 462; Witness 98; Witness 352; Witness 241; Witness 382.

¹⁰³⁴ Witness 656; Witness 489.

¹⁰³⁵ Witness 206; Witness 646; Witness 493; Witness 369; Witness 232; Witness 473; Witness 563; Witness 318; Witness 572; Witness 290; Witness 146; Witness 496.

¹⁰³⁶ Witness 324; Witness 187.

is “an undercurrent of misogyny which ebbs and flows depending on who you’re dealing with” in leadership.¹⁰³⁷ In many regions and field offices around the FDIC, employees continue to feel the existence of an “inner circle”¹⁰³⁸ consisting of those with influence and authority, where those in the inner circle are protected. Those who are not part of that inner circle report feeling left out and vulnerable to mistreatment. Those within the FDIC who have described this patriarchal culture have done so in the following ways:

- “It is a culture that is based on command and control, based on a 1950’s management style where it is them—the boys at the top. Promotions are based on who they know, who agrees with them.”¹⁰³⁹
- “Boy’s club culture, very misogynistic and patriarchal, and can be toxic. If someone is sensitive, it can be a tough place to be.”¹⁰⁴⁰
- “They promote people with the same ideology and who are willing to play by the rules. All the people promoted have some invisible connection to each other and others in charge.”¹⁰⁴¹
- Everyone would go out drinking, and if you didn’t, you weren’t one of the boys.”¹⁰⁴²
- “Frat boy culture... you had to be in or out. Or if you were a woman, I guess you just kind of survived.”¹⁰⁴³

Another aspect of the FDIC’s culture frequently noted during our review was its hierarchic nature. Many current and former FDIC employees—of all levels of seniority—described a strict hierarchy that permeates many aspects of work in the organization. For example, differences in grade and title matter significantly. In addition, substantial focus is placed on ensuring that the “chain of command” is followed and that superiors are made not to be upstaged or embarrassed. Current employees at FDIC have described the impact of this hierarchy as follows:

- “Employees under [a supervisor] just walk on eggshells, toe the line, never say no, don’t point out any flaws. Never embarrass your boss in front of their boss. Don’t make suggestions—it needs to look like it’s coming from your section chief or that they are aware of the suggestion. You are not allowed to take steps above the chain. Paranoia and level of control is at a fever pitch here.”¹⁰⁴⁴

¹⁰³⁷ Witness 566.

¹⁰³⁸ Witness 502; Witness 24; Witness 249; Witness 280; Witness 396; Witness 180.

¹⁰³⁹ Witness 567.

¹⁰⁴⁰ Witness 435.

¹⁰⁴¹ Witness 639.

¹⁰⁴² Witness 558.

¹⁰⁴³ Witness 499.

¹⁰⁴⁴ Witness 690.

- “For me, it’s a confused culture and it’s clear to me coming in that they are pseudo-military. There was a real chain of command and you were supposed to follow that chain of command.”¹⁰⁴⁵

The FDIC also has a culture that is “insular”¹⁰⁴⁶ and inward looking. As an agency situated differently (both in terms of pay scale and structure) from most other government agencies, yet also different from private institutions, the FDIC has developed—and prides itself in—doing things in unique ways, something employees have called “the FDIC way.”¹⁰⁴⁷ This insular culture has been reinforced by the fact that most of the leaders and managers have worked for extremely long periods of time (over thirty years for a significant portion of its senior leadership) at the FDIC. Those leaders have appointed managers, who themselves have been at the FDIC for decades. Those who joined FDIC mid-career from other federal agencies or from the private sector note that, although there are many positive aspects to its unique culture and way of doing things, the length of tenure of so many leaders and managers has bred an insularity that can and does create impediments to innovation and change.¹⁰⁴⁸ One former senior executive at the FDIC described it as follows: “[t]he culture here is different than from other agencies. My supervisor told me that she was once told, if you’ve been here for only ten years, people won’t listen to you, [and there are a] lot of cliques.”¹⁰⁴⁹ Another former senior executive, with the perspective of some time away from the agency, noted that “at its core, you have an organization that needs to shake up senior career management. I don’t think it is good for the place. It needs a good cleaning.”¹⁰⁵⁰

This patriarchal, hierarchic, and insular culture has contributed, in our view, to conditions that have allowed harassment, discrimination, and other forms of interpersonal misconduct to exist and gets in the way of these issues being reported and addressed so that they are not allowed to persist as they have.

5. Risk Aversion: Risk averse culture that has contributed to both actual and perceived lack of accountability.

While it appears that fear of retaliation has contributed in a significant way to the fewer instances of harassment and discrimination being reported and recorded through the FDIC’s official channels than have actually occurred, we find that the manner in which the FDIC has handled reported matters has also exacerbated the problem. Many we spoke to in our review observed that the FDIC takes an extremely risk-averse approach to disciplinary decisions, both with respect to performance, as well as misconduct. The FDIC has focused excessively on minimizing risk arising out of imposing discipline and has strictly limited the information that complainants receive about their complaints.¹⁰⁵¹ These decisions have perpetuated the belief within the FDIC that wrongdoers are not held to account. By focusing

¹⁰⁴⁵ Witness 290.

¹⁰⁴⁶ Witness 656; Witness 489.

¹⁰⁴⁷ Witness 98; Witness 660.

¹⁰⁴⁸ Witness 253; Witness 656; Witness 255; Witness 671.

¹⁰⁴⁹ Witness 262.

¹⁰⁵⁰ Witness 374.

¹⁰⁵¹ Witness 235; Witness 495; Witness 610.

overly on the risks of taking disciplinary action, the FDIC has underestimated the risks of *not* taking sufficiently forceful action.¹⁰⁵²

First, the FDIC has generally taken a risk-averse approach to the imposition of discipline. As discussed below in “Applicable Legal Standards” Section in Appendix B of the Report, federal employees including those at the FDIC are entitled to certain protections in connection with discipline beyond what employees in the private sector have. Those protections include grievance procedures and associated rights, as well as the application of the so-called Douglas factors which must be taken into account in taking adverse action against employees. As a result, the FDIC, like other federal agencies, risks having complaints and lawsuits alleging these rights have been violated. In making disciplinary decisions and resolving discipline-related disputes, the FDIC appears to factor in heavily the potential for litigation, and the potential for losses there. As noted above in the “Factual Findings, Reporting Channels” Section of the Report, one individual within the FDIC who held a senior role for a long period of time, described the standard for taking disciplinary action against someone for harassment or discrimination as “beyond a reasonable doubt” because the Corporation, and Legal Division in particular, wanted to only take disciplinary action in “air-tight,” highly documented cases so that the action could be defended, if necessary, in court.¹⁰⁵³ As another Field Office Supervisor put it, “we are so risk averse we can’t do anything, scared that the employees will sue us, and the ramifications are what you are seeing.”¹⁰⁵⁴ Many others in management, human resources, and the Legal Division shared the view with us that the overall approach to discipline is to be “litigation averse.”¹⁰⁵⁵ This approach does not take into sufficient account the reality that harassment and discrimination often occur without documentary evidence and without any witnesses other than the alleged harasser and complainant. Moreover, a litigation averse approach means that the FDIC’s disciplinary process can be overly focused on determining whether the law has been violated, *i.e.*, Title VII, and does not sufficiently address misconduct that falls short of a legal violation, but is nonetheless violative of the FDIC’s “zero tolerance” policy regarding harassment.¹⁰⁵⁶

Second, the FDIC’s position on what complainants can be told about the outcome of their complaints also has reflected a conservative, risk-averse interpretation of the Privacy Act. As noted in the “Applicable Legal Standards” Section in Appendix B, although the Privacy Act does generally prohibit the FDIC from disclosing to a complainant what specific discipline has been taken against anyone, it does permit the disclosure of personnel information on a “need to know basis.”¹⁰⁵⁷ The Privacy Act also does not prohibit the FDIC from disclosing to a complainant whether the allegations were found to be substantiated and that the FDIC will take action, nor does it prohibit generalized reporting on disciplinary actions

¹⁰⁵² Witness 656.

¹⁰⁵³ Witness 441.

¹⁰⁵⁴ Witness 472.

¹⁰⁵⁵ Witness 333.

¹⁰⁵⁶ *Anti-Harassment Policy* (June 2021).

¹⁰⁵⁷ Records maintained on individuals, 5 U.S.C. § 552a(b)(1)–(12). The statute provides that “no agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains,” which is subject to enumerated exceptions. One such exception is that a disclosure can be provided “to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties.” 5 U.S.C. § 552a(b)(1).

related to harassment and discrimination, so long as the reporting cannot readily be reverse engineered to determine a particular individual.¹⁰⁵⁸ We understand from our review that the FDIC previously viewed the Privacy Act as barring these types of disclosures, although it is now reconsidering this approach.¹⁰⁵⁹ The lack of information about discipline for harassment and discrimination has contributed to the perception that the FDIC does not take these issues sufficiently seriously and wrongdoers are not held accountable.

In sum, by approaching disciplinary decisions with an excessive focus on litigation risk, the FDIC has created the impression within its workforce that wrongdoers are not held to account. One senior executive with over 30 years of experience at the FDIC shared the view that “the whole idea [within the FDIC] is—instead of dealing with an issue—let’s move them around. That has occurred.”¹⁰⁶⁰ Our review has found this widely held perception to be one of the root causes of the workplace conduct problems the FDIC currently faces.

6. Lack of Clear Guidance: Lack of clear guidance on proper workplace behavior and how to address improper workplace behavior.

Our analysis of the FDIC’s training, policies, and procedures regarding sexual harassment, discrimination, and other forms of interpersonal misconduct, as well as our over 500 reports and interviews, lead us to the conclusion that there has been a lack of clear guidance about a number of important aspects of proper workplace conduct, including: what type of conduct constitutes a violation of the FDIC’s Anti-Harassment Policy and not just federal law prohibiting sexual harassment; what types of intimate, personal relationships among FDIC employees are permissible, in particular between supervisors and subordinates; and what constitutes the “workplace,” for example, for employees who stay at the Seidman Student Residence Center together or travel together for bank examinations. This lack of clarity, we believe, has contributed to increased instances of workplace misconduct.

First, while the FDIC has pronounced a commitment to a “zero-tolerance” policy for harassment¹⁰⁶¹ and the FDIC Anti-Harassment Policy says that “conduct need not rise to the level of illegal harassment to be prohibited,”¹⁰⁶² the FDIC’s training for employees regarding harassment has not meaningfully clarified for employees the scope of acceptable conduct under this Policy. The FDIC’s training on sexual harassment, discrimination, and other forms of interpersonal misconduct has been heavily focused on what would be unlawful under federal law. Both the Anti-Harassment Training and No FEAR Act Training, as well as the Equal Employment Opportunity (“EEO”) and Diversity for Supervisors Training, rely heavily on legal definitions and pull examples of unlawful conduct directly from relevant caselaw. Of course, training employees on the legal definitions is important. But focusing exclusively on that does not provide guidance on conduct that falls short of unlawful conduct but is nonetheless objectively offensive and unwelcome, and prohibited by the Anti-

¹⁰⁵⁸ OFFICE OF PRIVACY AND CIVIL LIBERTIES, U.S. DEP’T OF JUSTICE, *Overview of the Privacy Act: 2020 Edition*, 5 U.S.C. § 552a(b)(1) - *Need to Know within Agency*, <https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition/disclosures-third-parties#b1>.

¹⁰⁵⁹ Witness 333; Witness 542.

¹⁰⁶⁰ Witness 459.

¹⁰⁶¹ Chairman Gruenberg’s 2022 EEO Policy Statement (“I affirm our zero tolerance for prohibited, discriminatory behavior.”)

¹⁰⁶² *Anti-Harassment Policy* (June 2021).

Harassment Policy. This includes micro-aggressive behavior or verbal and non-verbal conduct that reflects biases. Nor does the training effectively teach employees, especially supervisors, ways to interrupt or challenge unacceptable behavior before it rises to the level of unlawful harassment. FDIC employees have overwhelmingly informed us that such guidance would be helpful. And while the FDIC offers a number of electives on inclusive leadership trainings, none are required for all FDIC employees. Instead, FDIC employees are encouraged to seek out these trainings voluntarily.¹⁰⁶³ The infrequency and manner of the current training we believe have also contributed to why FDIC employees lack a clear understanding of what type of conduct violates the Anti-Harassment Policy as well as the EEO Policy.

Second, the FDIC does not have a policy that addresses intimate, personal relationships among employees, particularly between supervisors and subordinates. As discussed above in the “Factual Findings, Allegations of Interpersonal Misconduct” Section of the Report and described in greater detail below in Appendix A, there have been a number of well-known examples of individuals in supervisory positions who had relationships of an intimate, personal nature with subordinates, including some who have had long careers at senior levels at the FDIC. We have also received reports from employees who received unwanted advances and attention from more senior colleagues where the senior colleagues did not believe they were doing anything wrong. In the absence of a policy that prohibits or requires disclosure of such relationships, employees have been left to address these situations, if at all, in ways that fall outside the disciplinary framework. While it should seem obvious that relationships between supervisors and subordinates are fraught with risks for an organization, that does not appear to be well understood within the FDIC. This has created an environment where pursuing romantic relationships with colleagues, including subordinates, has not been viewed as problematic. As one senior woman FDIC executive noted based on her years of experience at the FDIC, many supervisors thought it was fine to pursue romantic relationships in the office. But for her, that was not right: “I come to work to find professional relationships, not personal ones.”¹⁰⁶⁴ The examples cited in the Report and reported into our hotline of unwelcome sexual advances and sexualized conduct illustrate the risks of not having a clear policy around relationships within the office.

Third, the lack of a clear definition of appropriate workplace boundaries is also an issue that has impacted those who travel frequently for the FDIC and attend trainings at the Seidman Student Residence Center. For many FDIC employees, including bank examiners pursuing a commission, they come directly out of college into the FDIC as one of their first professional experiences.¹⁰⁶⁵ The FDIC expends significant resources on training these individuals to become examiners, but spends comparatively little on training these individuals on sound and professional workplace conduct. While the proper standards of conduct may seem obvious to many, it can become less clear when boundaries between personal and professional lives become blurred with lengthy stays at the Seidman Student Residence Center or during travel to banks in the field.¹⁰⁶⁶ To our knowledge, the FDIC has offered no training to employees specifically addressing how to navigate these situations and, indeed, many in the FDIC continue to this day to believe that when travelling on trips paid for by the FDIC any

¹⁰⁶³ Report, “Policies, Procedures, Practices, and Trainings” Section.

¹⁰⁶⁴ Witness 459.

¹⁰⁶⁵ Witness 464; Witness 642; Witness 130; Witness 374.

¹⁰⁶⁶ Report, “Factual Findings” Section.

time after normal working hours is “personal time” during which employees cannot be held accountable by the FDIC for misconduct.¹⁰⁶⁷ This has led to some of the instances in which harassment and other forms of interpersonal misconduct have occurred during periods of travel or at the Seidman Student Residence Center. While the FDIC offers a mandatory Workplace Security Training, it predominantly focuses on physical security threats on FDIC premises, instead of first-responder or bystander training.¹⁰⁶⁸

The lack of clarity within the FDIC about appropriate workplace conduct—whether objectionable behavior that does not rise to unlawful conduct, relationships between supervisors and subordinates, or conduct while traveling for business—has contributed to the conditions that have allowed workplace misconduct to occur and persist.

7. Abuse of Power Dynamics: Abuse of certain power dynamics and imbalances within the FDIC has contributed to conditions that foster workplace misconduct.

While power dynamics exist in any organization, certain aspects of the FDIC structure and culture have intensified them in ways that have contributed to the harassment, discrimination, and other forms of interpersonal misconduct that have occurred, as well as the reluctance and fear of reporting such conduct. We highlight three specific aspects of the dynamics at the FDIC: the process for becoming a commissioned examiner, the structure and management of the field offices, and the exceedingly long tenure of the FDIC’s senior executives and managers.

First, commissioned bank examiners play a critical role in the FDIC’s mission. Given the importance of their work, the FDIC places emphasis on and devotes substantial resources to the process by which individuals are trained to and become commissioned examiners. The commissioning process involves years of studying and testing, as well as reviews and evaluation.¹⁰⁶⁹ That review and evaluation is primarily done by supervisory examiners and field supervisors, and involve significant discretion of individual supervisors and managers.¹⁰⁷⁰ Based on our review, a divide has developed within the FDIC between commissioned examiners and non-commissioned employees, with some non-commissioned employees feeling they are treated poorly and are “disposable”¹⁰⁷¹ in contrast to commissioned examiners who are protected and “like fixtures” who could do “no wrong.”¹⁰⁷² Descriptions of commissioned examiners as “arrogant” and “entitled,” underscore this dynamic.¹⁰⁷³ These attitudes have contributed to an environment in which it can become acceptable and even commonplace for non-commissioned employees to be treated in ways inconsistent with the FDIC’s proclaimed values and culture. This in turn affects the FDIC’s mission as the mistreatment leaves some employees feeling demoralized. In addition, the importance of the feedback and reviews in the commissioning process leaves non-commissioned examiners particularly vulnerable to the whims of their supervisors and thereby fearful of doing anything

¹⁰⁶⁷ Witness 451; Witness 259; Witness 431; Witness 363.

¹⁰⁶⁸ *Workplace Security Training* (undated).

¹⁰⁶⁹ *Examiner Training and Development Policy* (Sept. 2021).

¹⁰⁷⁰ *Examiner Training and Development Policy* 11 (Sept. 2021) (“FSs make recommendations to the RD regarding employee readiness for promotion to the CG-11 grade level and for commissioning”); Witness 669.

¹⁰⁷¹ Witness 226.

¹⁰⁷² Witness 435; Witness 485.

¹⁰⁷³ Witness 656; Witness 435; Witness 523; Witness 648.

that could jeopardize their chances of becoming commissioned, including reporting misconduct.¹⁰⁷⁴

Second, we found in our review that power imbalances in the FDIC’s field offices can be particularly pronounced. Because of their physical separation from headquarters, as well as relatively lengthy tenures, the leaders of regions and field offices (as well as those managers who are viewed to be close to the leaders) maintain significant power and discretion over the employees in their offices. Many described the field offices as “fiefdoms” or “mini kingdoms” where the leaders’ personal preferences, style, and behavior can go unchecked and adopted by others within the office.¹⁰⁷⁵ The leadership within field offices have substantial authority and influence over many aspects of an FDIC employee’s lives, including their travel, schedule, and assignments, as well as whether they receive the type of opportunities that can be valuable for promotions.¹⁰⁷⁶ This power imbalance and structure can lead to—and has led to—employees experiencing sexual harassment, discrimination, and other forms of interpersonal misconduct, including from their field office leadership, but afraid to and struggling with how to raise issues without being retaliated against or being perceived as “disloyal.”¹⁰⁷⁷ We also learned in our review that the supervision of and communications with the field offices from regional offices and headquarters are not transparent to rank-and-file employees, often leaving them with a sense of isolation, “on [their] own islands” without resources and ability to turn to others beyond their office.¹⁰⁷⁸ While an extreme case, the findings related to interpersonal misconduct above in the “Factual Findings, Allegations of Interpersonal Misconduct” Section and in Appendix A that occurred in the San Francisco field office illustrate how this power dynamic can lead to widespread workplace misconduct, without the misconduct being reported and corrected. As one anonymous individual said, “the farther you get from DC, the crazier things get.”¹⁰⁷⁹

Third, for a number of reasons, including relatively higher compensation compared to other government agencies, as well as a widely held pride in and commitment to the public mission of the agency, many of the FDIC leaders and managers have had lengthy tenures.¹⁰⁸⁰ As an Office of Inspector General report from February 2023 noted, 40% of all FDIC Executives and 30% of all managers had sufficiently long tenure to be eligible for retirement in 2022, climbing to 67% and 56%, respectively by 2027.¹⁰⁸¹ While lengthy tenure, commitment, and loyalty bring many positives, they also can create both insularity (as described above), as well as certain challenging power dynamics. The FDIC’s executives have generally known and worked with each other for decades and have put supervisors and managers in their positions. Newer employees of the FDIC can—and, as we have been informed, do—feel that the long-standing managers can be “cliquey” and be perceived to

¹⁰⁷⁴ Report, “Factual Findings” Section.

¹⁰⁷⁵ Witness 602; Witness 462; Witness 587; Witness 302; Witness 508.

¹⁰⁷⁶ Report, “Factual Findings” Section.

¹⁰⁷⁷ Witness 204; Report, “Factual Findings” Section.

¹⁰⁷⁸ Witness 372.

¹⁰⁷⁹ Witness 15.

¹⁰⁸⁰ Report, “Factual Findings” Section.

¹⁰⁸¹ FDIC OIG, *Top Management and Performance Challenges Facing the Federal Deposit Insurance Corporation* 25 (Feb. 2023).

“have each other’s backs.”¹⁰⁸² Under such circumstances, it can be more difficult for them to raise issues or problems that relate to particular supervisors who have been at the FDIC for years.

Based on our review, these structural power imbalances—some created by circumstances unique to the FDIC, including the commissioner versus non-commissioned examiner dynamic, the regional and field offices, as well as the lengthy tenures of executives and managers—have contributed to the conditions that have led to sexual harassment, discrimination, and other forms of interpersonal misconduct, as well as the lack of reporting.

8. Confusing and Ineffective Reporting Channels: Confusion as to proper reporting channels and processes involved that has contributed to underreporting.

Confusion continues to exist within the FDIC about the proper channels through which FDIC employees can and should report allegations of sexual harassment, discrimination, and other forms of interpersonal misconduct. A number of different mechanisms to make reports exist and have been publicized within the FDIC, including the Anti-Harassment Program, the EEO complaints process, and LERS (within the Division of Administration) and LEAS (within the Legal Division). Some of the confusion around these reporting mechanisms includes the difference between filing an EEO complaint versus filing a harassment complaint through the AHP; the difference between speaking to LERS and LEAS on the one hand versus the EEO complaints channel and the AHP on the other; and whether the Internal Ombudsman is itself a separate reporting channel that will lead to any follow up action. While each of these reporting channels and internal resources serves different functions, including some that are mandated by federal law for specific purposes, the relative functions and purposes remain opaque to many employees. That has led, for example, to certain employees believing that a complaint made through one channel is sufficient to protect their rights and to trigger other remedies, even when it is not.¹⁰⁸³ That confusion has caused certain employees to lose their rights, for example, to file an EEO complaint.¹⁰⁸⁴ Based on our review, it has also not been made sufficiently clear to employees or within OMWI, LERS, and LEAS how complaints that do not rise to legal harassment or discrimination but nevertheless might violate the Anti-Harassment Policy or are inconsistent with the FDIC’s values should be handled. Many managers, who were identified to employees as individuals who could receive complaints, did not know where to direct complaints or what their role was in making that determination.¹⁰⁸⁵

Further, no formal reporting channels at the FDIC have existed for anonymous reporting of harassment, discrimination, or other forms of interpersonal misconduct. Employees have expressed a need for such an anonymous reporting channel given the strong fear of retaliation within the corporation and the current structure of the AHP referring all matters that need investigation to LERS and LEAS, both of which report to and are viewed as being aligned with management.¹⁰⁸⁶ Although employees could provide comments through FEV surveys and questions could be raised in the Open Exchange portal maintained by certain

¹⁰⁸² Witness 646; Witness 573; Witness 261; Witness 280.

¹⁰⁸³ Report, “Factual Findings” Section.

¹⁰⁸⁴ Witness 385; Witness 449; Witness 583.

¹⁰⁸⁵ Witness 431; Witness 348; Witness 360.

¹⁰⁸⁶ Witness 218; Witness 375; Witness 237; Witness 265; Report, “Factual Findings” Section.

divisions, neither served as a formal channel through which anonymous reports of misconduct could be made. The fact that within just over four months, over 500 reports had been made to the hotline created as part of our review reflects the degree to which the lack of an anonymous reporting system has been an unmet need for the FDIC, especially when compared to the limited number of formal reports to the AHP that have been reflected in the FDIC’s records.

Finally, while certain Standard Operating Procedures (“SOPs”) have been created on how reports of harassment and discrimination should be handled by the FDIC (the lack of which was a finding of the OIG 2020 Sexual Harassment Report),¹⁰⁸⁷ FDIC employees remain generally unfamiliar with the existing SOPs. Moreover, as described above,¹⁰⁸⁸ the FDIC does not routinely inform its employees about the rights they have once an investigation is commenced. And we have seen many examples of violations of the requirement, set forth in the SOPs, to respond to complainants within 48 hours, to provide notice of the completion of an investigation,¹⁰⁸⁹ to initiate an investigation within 10 day of receiving the complaint,¹⁰⁹⁰ and to close an investigation within 60 days.¹⁰⁹¹ These lapses—as well as a confusion as to the processes and their rights under them—have had an impact on FDIC employees’ willingness to report misconduct.

9. Investigative Processes Lack Credibility: Current investigative functions that lack credibility among employees and are viewed as being protective of management.

The FDIC’s process for investigating allegations of harassment, discrimination, and other forms of workplace misconduct suffers from a lack of credibility among many within the FDIC. Concerns about the process include a lack of independence, failure to coordinate among FDIC entities involved, lack of expertise and experience among investigators, and long delays in completing the investigations. These issues have led to a lack of trust and confidence in the process.

First, many FDIC employees we spoke with believed investigations into misconduct lacked independence and fairness because they were conducted by LERS and LEAS, who they viewed as representing management.¹⁰⁹² LERS and LEAS day-to-day responsibilities do in fact include supporting and defending management, for example, if litigation were to arise relating to certain conduct by a manager. While this structure for handling harassment investigations is not unique within federal agencies, given other cultural issues at the FDIC (including the view of a self-protective, insular culture among management as described above), concerns about the independence of this investigative function have become more acute and problematic at the FDIC. As one senior executive put it “at the end of the day, they [LERS and LEAS] work for the FDIC. They work for management. And they will do what they think is best to protect the FDIC. They have the mentality of the FDIC,

¹⁰⁸⁷ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 25, 35 (2020), <https://www.fdicigoig.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf> (the OIG recommended that the FDIC “develop and implement procedures for investigating sexual harassment misconduct allegations,” to which the FDIC agreed).

¹⁰⁸⁸ Report, “Factual Findings” Section.

¹⁰⁸⁹ Witness 605; Witness 636; Witness 450; Witness 204; Witness 444; Witness 583.

¹⁰⁹⁰ Witness 369; Witness 411; Witness 204; Witness 583.

¹⁰⁹¹ Witness 333; Witness 583; Witness 449.

¹⁰⁹² Report, “Factual Findings” Section.

rather than the mentality of the victim.”¹⁰⁹³ Even certain individuals within LEAS and LERS acknowledged that it was fair for employees at the FDIC to question the impartiality of the investigations.¹⁰⁹⁴ Significantly, the Anti-Harassment Program at the FDIC does not have the authority itself to open or conduct investigations, but rather must refer them to LERS and LEAS after the initial intake.¹⁰⁹⁵ And many FDIC employees expressed confusion and concern about how allegations of harassment against individuals within LERS, LEAS, OMWI, and senior management are handled given that the current reporting and investigatory processes involve these very same groups.¹⁰⁹⁶ Although the FDIC does have a conflict of interest policy that applies to discrimination complaints made against the Chair, the Director of OMWI, or any OMWI supervisor,¹⁰⁹⁷ no formal policy exists for harassment and other complaints made against other senior leaders.

Second, the working relationship between LERS and LEAS has faced challenges that have impacted the quality of the investigations. Because of a series of disagreements in and obstacles to working effectively together, in May 2020, LERS and LEAS had to enter into a MOU setting forth rules around their relative roles in conducting investigations.¹⁰⁹⁸ The mere fact that two components within the same agency, critical to this important investigative function, had such trouble working together as to require an MOU to govern their interactions speaks volumes. In 2019, leading up to the MOU, the FDIC conducted an internal review to determine whether LERS should be merged with LEAS in part to address some of the issues they were having in working together in the investigative function. Although the decision was made to keep the two entities separate, the review put on display the ongoing tension and conflict between the groups.¹⁰⁹⁹ During our review, LERS personnel in regional offices and in headquarters continued to express concern about the manner in which LEAS involves itself in investigations and the consistency with which the investigatory procedures in the MOU were being followed. FDIC employees also described instances of LEAS redirecting who would lead investigations, directing that certain questions not be asked, and reducing suggested discipline against LERS recommendations.¹¹⁰⁰ On the other hand, individuals within LEAS described instances in which LEAS was not sufficiently kept apprised of investigations as they were ongoing, or where proper investigative steps and techniques were not used by LERS. These tensions, we believe, have had an impact on the ability of LEAS and LERS to conduct fair and thorough investigations that engender trust among FDIC employees.

¹⁰⁹³ Witness 459; Witness 321.

¹⁰⁹⁴ Witness 326; Witness 410.

¹⁰⁹⁵ *Anti-Harassment Policy 7* (June 2021).

¹⁰⁹⁶ Witness 595; Witness 636; Witness 652; Witness 400.

¹⁰⁹⁷ *FDIC Equal Employment Opportunity (EEO) Conflict of Interest Discrimination Complaint Processing Procedures* (Sept. 2021).

¹⁰⁹⁸ LERS-LEAS MOU (May 19, 2020).

¹⁰⁹⁹ One LEAS employee discussed issues with communication, where LERS would not include her in meetings with management. *LEAS Attorney Interview* (Nov. 2019). One LERS specialist acknowledged there was “friction,” and that one particular LEAS employee “wanted LEAS to take over everything.” *LERS Employee Interview* (Oct. 2019). This tension was even on display to clients. For example, one LERS employee stated that she had observed friction between LEAS and LERS, especially in the regions, and in one case noted that LEAS and LERS argued with one another in front of a client. *LERS Employee’s Interview* (Nov. 2019).

¹¹⁰⁰ Witness 475; Witness 673; Witness 421.

Third, while many LERS employees who conduct investigations appear to have relevant experience, including at other federal agencies, we found that others did not. And the SOPs in the MOU for conducting such investigations do not provide sufficiently specific guidance, being quite broad and vague in places, as are the descriptions of those procedures in the Anti-Harassment Policy itself.¹¹⁰¹ In addition, there appears to have been a lack of consistent training of LERS employees handling these investigations, including how to conduct them with sensitivity for the personal nature of many of these matters or the behavioral science to understand expected reactions to being a victim of harassment. This has led to investigations in which complainants are not interviewed at all because the allegations are “sensitive”¹¹⁰² or the complainant being interviewed in such a way that the victim felt “blamed” for being harassed.¹¹⁰³

Finally, while the FDIC’s policies and procedures require complaints to be addressed in a timely way, within set periods of time, LERS, LEAS, and OMWI have not been able to consistently meet these requirements. For example, the Anti-Harassment Policy requires complaints to be responded to as an initial matter within 48 hours. But, because of a lack of a robust tracking system, resource constraints within the Anti-Harassment Program, and the challenges between LERS and LEAS noted above, some employee complaints were not responded to for several weeks or even months.¹¹⁰⁴ Once an investigation begins, no standard practice or procedure appears to have existed to keep a complainant or subject of an investigation informed about its status.¹¹⁰⁵ And, while no policy exists requiring harassment investigations to be completed within a set period of time (unlike EEO complaints), many individuals from LEAS and LERS acknowledged that investigations can take a long time to complete, with some recent investigations taking as long as six months.¹¹⁰⁶ While investigation lengths can vary for any number of reasons (including resource constraints, given that investigations are not LEAS and LERS’s sole function), lengthy delays in completing investigations, as well as a lack of a consistent approach to them, have caused FDIC employees to lose faith in the efficacy and credibility of the investigative process.¹¹⁰⁷

10. Insufficient Recordkeeping: Lack of proper recordkeeping that would allow the FDIC to understand and keep track of the volume, trends, and other information relating to workplace conduct.

The FDIC has failed to maintain records of allegations and complaints under its Anti-Harassment Program and related disciplinary actions, as well as settlement agreements, in a systematic, consistent, and searchable manner. The lack of systematic record-keeping has prevented reliable identification and review of workplace misconduct allegations, as well as the handling of such allegations. Importantly, without reliable records relating to workplace conduct issues, the FDIC has been unable to understand, track, and address misconduct,

¹¹⁰¹ Witness 348.

¹¹⁰² Witness 348.

¹¹⁰³ Witness 503.

¹¹⁰⁴ Witness 605; Witness 636; Witness 583.

¹¹⁰⁵ Witness 411; Witness 204; Witness 583.

¹¹⁰⁶ Witness 333; Witness 583; Witness 449.

¹¹⁰⁷ Report, “Factual Findings” Section.

including by, for example, seeking to uncover trends and patterns and developing effective responses on an institution-wide basis.

In our review, we identified similar record-keeping issues as those cited in the OIG 2020 Sexual Harassment Report, including that the FDIC could not “readily identify the population of sexual harassment misconduct allegations nor identify or assess patterns of harassment either by individuals or within offices.”¹¹⁰⁸ The OIG report had noted that record keeping was “decentralized, untimely, incomplete, and inaccurate.”¹¹⁰⁹ We found that this remains a problem. For example, we learned that the Anti-Harassment Program did not have a reliable system for tracking harassment complaints brought under the Anti-Harassment Policy nor did the Program have access to the FDIC’s historical harassment complaints. And until around October 2022, LERS did not have a centralized system that kept in a systematic way information related to misconduct investigations, including with respect to sexual harassment. From 2020 to 2022, LERS had sought to implement a system from an outside service, the Labor and Employee Relations Information System (“LERIS”), that was ineffective for this purpose, and prior to that, investigations related information was maintained in a decentralized way in hard copy file rooms, individual LERS specialists’ files, and in an incomplete way in a broader human resources database used for other purposes. Similarly, settlement agreements with employees including those involved in workplace misconduct were stored by the Legal Division in a decentralized manner by a number of different, inconsistent means. We were also told that settlement agreements involving certain high-level officials were maintained separately, in an unsystematic way.¹¹¹⁰

Our review noted that this poor record keeping had created challenges for the FDIC as it sought to respond to the different inquiries that have arisen over the last year. For example, in advance of and following the November 2023 *Wall Street Journal* reporting, FDIC management struggled to determine the relevant statistics, including the number of sexual harassment complaints in the last five years.¹¹¹¹ Moreover, as we sought to verify the accuracy of the FDIC’s statistics related to complaints based on sexual harassment and interpersonal misconduct reported externally and maintained internally using LERS’s centralized database, we faced similar challenges in obtaining the reliable data and information. For example, the spreadsheet provided by the Anti-Harassment Program covered reports received only starting mid-January 2024, the Division of Administration database only started tracking the types of investigations of complaints and identifying whether they fell under the Anti-Harassment Program around March or May 2023, and the Legal Division provided sets of settlements in an iterative fashion as they were not maintained in a readily searchable manner.¹¹¹²

Without reliable record-keeping around workplace conduct-related allegations, reports, and settlements, the FDIC has had—and will continue to have—trouble tracking and understanding the volume and nature of workplace misconduct issues it faces. As a result, its

¹¹⁰⁸ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 19 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

¹¹⁰⁹ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 20 (2020), <https://www.fdicigo.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

¹¹¹⁰ Report, “Factual Findings” Section.

¹¹¹¹ Report, “Historical Records Regarding Discrimination, Harassment, and Other Complaints,” and “Factual Findings” Sections.

¹¹¹² Report, “Historical Records Regarding Discrimination, Harassment, and Other Complaints” Section.

efforts to uncover trends and patterns and its ability to develop effective responses to them will be hampered. As noted in the OIG 2020 Sexual Harassment Report, “[w]ithout centralized, timely, complete, and accurate data, the FDIC cannot understand and rely upon the population of sexual harassment allegations and promptly process misconduct allegations” or “identify patterns of harassment by individuals or within offices over time in order to identify and respond to systemic concerns.”¹¹¹³ That remains a problem today, almost four years after the OIG 2020 Sexual Harassment Report.

¹¹¹³ FDIC OIG, REPORT ON PREVENTING AND ADDRESSING SEXUAL HARASSMENT 12, 22 (2020), <https://www.fdicogov/sites/default/files/reports/2022-08/EVAL-20-006.pdf>.

RECOMMENDATIONS

The employees of the FDIC have resoundingly expressed a desire, regardless of gender, race, ethnicity, color, sexual orientation, or ability, to have a culture in which all members of the community can thrive and reach their full potential in service of the FDIC's mission. The conduct, behaviors, mindsets, policies, procedures, and structures described in the "Factual Findings" Section of the Report are major barriers to this goal. While every person we spoke to was deeply committed to the FDIC's mission, the majority of hotline callers and interviewees described their experience of the FDIC's culture in ways that demonstrate there is a very significant gap between the culture these employees desire and the current culture, and between the way in which FDIC leadership in Washington, D.C. perceive the culture and the experiences of those outside of headquarters. We recommend that the FDIC adopt the steps outlined below in order to protect the physical and psychological safety of FDIC employees, prevent workplace misconduct, and move closer to the culture its employees desire, which will further its important mission.

We recognize that, as discussed above, the FDIC prepared an extensive Action Plan to address issues raised in the recent public reporting and is working on implementing that Action Plan. We also understand that other entities, including the Office of Inspector General, are conducting reviews of the FDIC's workplace culture and policies, procedures, and training regarding sexual harassment and discrimination and that these reviews may lead to additional remedial recommendations. While there is overlap between the scope of our review, the Recommendations set forth below, and the action items being considered by the FDIC currently, we recommend that the FDIC review this Report and the bases for our recommendations and adopt the recommendations contained in this Report. To the extent, through its Action Plan or otherwise, the FDIC determines that other changes are appropriate that do not conflict with the recommendations herein, we recommend those be implemented as well.

For any recommendations to be implemented effectively, those at the FDIC who take them forward will need to accept that cultural and structural change is necessary, acknowledge that there have been failures to identify and address issues in the past, and recognize that the manner and commitment with which recommendations are implemented is, in some ways, as important as the recommendations themselves. The implementation needs to be consistent with the FDIC's core values and be led by individuals who are known to be, and actually are, committed to them.

1. **Protect the Victims: Ensure that the FDIC takes steps to protect the physical and psychological safety and wellbeing of those who have experienced sexual harassment, discrimination, bullying, or other interpersonal misconduct.**
 - a. Mental Health Resources: Provide dedicated mental health counselors experienced in harassment and discrimination-related trauma to each of the affinity Employee Resource Groups ("ERGs") for group counseling and assistance, giving the ERGs input into the selection of the resources. The resources should remain available for at least 12 months. Each ERG and the Chairman's Diversity Advisory Councils ("CDACs") should also be provided immediately with information related to currently available resources for mental

health support and accommodations at the FDIC, and should be granted approval to disseminate this information to all employees. The FDIC should consistently and routinely communicate with all employees regarding available mental health resources.

- b. Personal Support: Any individual that brings a complaint or is the subject of a complaint under the FDIC's current Anti-Harassment Policy or Equal Opportunity Policy and additionally proposed Anti-Fraternalization and Anti-Retaliation Policies described below should be offered a point person for support and information throughout the process. This person must be knowledgeable about the FDIC's policies, procedures, and practices related to these complaints, including legal and human resources-related information and counseling services.
- c. Access to the Chairperson: The Chairperson and all individuals who directly report to the Chairperson and also themselves have direct reports should meet with at least each ERG, CDACs, and each region to solicit input for the implementation process for these recommendations and any others the FDIC undertakes. An anonymous pulse check should be taken before and after each listening session and shared with the Chairperson and such direct reports. Thereafter, they should meet on a quarterly basis with each ERG and CDAC for the next three years and then regularly, but no less often than twice annually. The agenda and materials ERGs and CDACs create for these meetings should be at their sole discretion.
- d. Credible Investigations of Past Harassment: After the establishment of the new, independently run hotline described in 6(a) below and the implementation of the new structure and procedures for conducting investigations of harassment allegations described in 6(b)-(d) below, clearly communicate that this new hotline and these new procedures are open and applicable to anyone who has experienced harassment regardless of when it occurred and whether it was previously reported through the hotline established in connection with this Report.

2. **Culture Transformation: Undertake a culture transformation led by those with the leadership capacity to effectuate a process that reflects the culture that FDIC employees aspire to have, is supported by experts, and monitored by an independent third party.**

- a. Culture and Structure Transformation Monitor: Appoint a single individual, who is not currently employed by the FDIC, to monitor and audit any and all recommendations the FDIC adopts from this Report, the Action Plan, and any other work the FDIC decides to undertake to remediate its culture, policies, procedures, and structures that impact sexual harassment, discrimination, and other interpersonal misconduct ("Transformation Monitor"). This individual should be selected by the FDIC Board and should be provided sufficient budget and staff, as well as full access to FDIC employees and documents. This

individual should report to the FDIC Board on a monthly basis for the first year, and then routinely thereafter until the work is completed. The reports submitted to the FDIC Board should be made available to all FDIC employees. The Transformation Monitor should consult and coordinate with the OMWI Director to the extent any of the work impacts the subjects over which OMWI Director has authority by statute.

- b. Independent Third Party Expertise: The FDIC should retain an independent third party with substantial and credible experience in the topics covered by this Report and these Recommendations to advise and assist with implementation of the Recommendations. The Transformation Monitor should have access to this expert as it conducts its audit of the FDIC's implementation of these Recommendations.
- c. Barrier Analysis: Engage an independent third-party to conduct a barrier analysis to determine what, if any, barriers exist at the FDIC in recruiting and retaining women and people from minority groups, including by analyzing practices and data relating to hiring, commissioning, promotion, and compensation. The analysis should include a review of bank examiner commissioning decisions, focusing on record-keeping, consistency of decision-making, and potential discrimination in both the process and outcome of the commissioning decisions. It should also include a review of position descriptions to ensure that these descriptions are consistent with the FDIC's equal opportunity and diversity, equity, and inclusion goals. To the extent the third party identifies barriers and/or concerns regarding what is reflected in the data, the third party should make recommendations, which could include remediation to those impacted by such barriers. This third party may or may not be the same third party that is retained for 2(b).
- d. Culture Survey: Complete the Culture Survey that the Office of Inspector General is currently developing and transparently share the results and action plans resulting therefrom.

3. **Holding Leadership Accountable: Hold leadership accountable for ensuring adherence to the FDIC's values and the Code of Workplace Conduct.**

- a. Performance Reviews: Revise performance reviews for all executives and managers to include assessments of the individual's compliance with the FDIC's values and the Code of Workplace Conduct (discussed below).
- b. 360 Review: Implement a 360-degree review process for the Chairperson, all individuals who directly report to the Chairperson and themselves have direct reports, Executive Managers, and anyone who has responsibility for an Action Plan committee or for implementing these recommendations. For at least the first two years, the reviews should be facilitated by an independent third party and should focus on the mindset, knowledge, and skills that are necessary to lead culture change. The independent third party may or may not be the same

third party that is retained for 2(b) above. These 360 reviews should be repeated annually.

- c. Longevity-Data: Develop longevity-related data that tracks the years in-position for all senior executives and managers to enable the FDIC to conduct pulse checks in field offices, regions, and divisions that have had senior leaders in position for significant periods.
- d. Pulse Checks: Conduct annual pulse checks in any field office, region, or division whose leader has been in place for more than 5 years.
- e. Listening Sessions: Conduct annual listening sessions in any field office, region, or division whose leader has been in place for more than 5 years.
- f. Action Plans: Develop action plans to address any issues raised in the longevity pulse checks and listening sessions and to ensure a positive culture in the relevant field office, region, or division.

4. **Policy Enhancements and Additions: Develop additional policies that impact sexual harassment, discrimination, and other interpersonal misconduct and communicate effectively about such policies.**

- a. Code of Workplace Conduct: Develop and implement a new Code of Workplace Conduct that defines behavioral expectations for all FDIC employees and is focused on the behavior the FDIC expects to see from its employees, aligns with a culture in which all members can thrive and reach their full potential, and addresses the behaviors and themes identified in this Report.¹¹¹⁴ The Code of Workplace Conduct should explicitly state that behavioral expectations are in place even while employees are traveling for work-related reasons. It should also state that violations can be a basis for disciplinary action.
- b. Revised Mandatory Reporting Obligations: Revise the Anti-Harassment Policy to require that any manager that learns of or observes conduct that may fall within the scope of the Policy report it formally and promptly, and no later than within 3 days. The Policy should expressly state that failure to comply with this aspect of the Policy can result in disciplinary action.
- c. Anti-Fraternization Policy: Develop and implement an Anti-Fraternization Policy that requires supervisors who engage in intimate personal relationships with supervisees to report that relationship to their supervisor for consideration as to whether the supervisor and supervisee can continue in their roles in light of the relationship.

¹¹¹⁴ We recognize that the FDIC recently launched a new version of its Code of Conduct that includes a chart for Modelling FDIC Values. While this enhancement to the FDIC's prior values statement is commendable, we do not believe it addresses all of the conduct and cultural issues identified in this Report.

- d. Anti-Retaliation Policy: Develop and implement a stand-alone Anti-Retaliation Policy to protect complainants from retaliation and to take action against those that are found to have engaged in retaliation. The Anti-Retaliation Policy should, at a minimum, clearly proscribe retaliation against complainants and require a member of the group responsible for investigating violations of anti-harassment related policies (*see* Recommendation 6.b. below) to follow up with complainants at routine intervals to assess if they have experienced retaliation.
 - e. Active Communication: Actively and routinely communicate about the existence of the Code of Workplace Conduct, Anti-Harassment Policy, Equal Opportunity Policy, as well as any newly created Anti-Retaliation Policy and Anti-Fraternization Policy, through a variety of internal and external channels and means, in order to emphasize that the FDIC has a zero tolerance policy with respect to sexual harassment, discrimination, interpersonal misconduct, and retaliation. Ensure that these policies and guidance are prominently featured and easy to find in internal websites and resources.
5. **Enhanced Training Program: Develop and implement a more effective training program on workplace conduct, culture, and leadership for all employees.**
- a. Annual, Mandatory, Live Training on Policies and Reporting Channels: Live, in person training for all employees annually on the Code of Workplace Conduct and the Anti-Harassment Policy, Equal Opportunity Policy, as well as any newly created Anti-Fraternization and Anti-Retaliation Policies. The trainings should include a practical component, including use of hypotheticals that arise directly from this Report, address conduct that violates these policies but not necessarily the law, tell employees how to report conduct and their rights when doing so, and address what does and does not constitute the “workplace” in terms of when these policies apply. Managers should be trained on their unique responsibilities for identifying and reporting misconduct. All employees must receive this training within 30 days of joining the FDIC.
 - b. Skills-Based Training for Recognizing and Interrupting Bias: Mandatory, annual training that teaches FDIC employees how to interrupt, disrupt, and stop conduct that is inconsistent with the Code of Workplace Conduct and/or reflects bias, whether unconscious or otherwise. This training should include a practical component in which FDIC employees practice these skills and receive feedback during the training.
 - c. Leadership and Management Training Program: Develop and implement a mandatory, core curriculum for all employees on inclusive leadership and that is grade and role appropriate. The curriculum should incorporate training on leading with a growth mindset and creating a working environment that is psychologically safe.

6. **Improved Structures and Procedures: Enhance the structures and procedures responsible for overseeing and implementing the FDIC’s Anti-Harassment Policy and Code of Workplace Conduct.**

- a. Anonymous Hotline: Provide an alternative reporting mechanism managed by a third-party who is independent from the FDIC that would allow employees to report allegations of harassment to a single source in a fully anonymous manner if so desired. Any information reported to this hotline should be conveyed to any other FDIC reporting channel as necessary to ensure that employees do not have to report to multiple channels themselves.
- b. Conducting Investigations Independently: Any allegations against the Chairperson, individuals who directly report to the Chairperson, and Executive Managers relating to violations of the Anti-Harassment Policy, as well as any newly created Anti-Fraternization Policy and Anti-Retaliation Policy should be conducted by third-party firms that have not previously completed significant work in conjunction with senior FDIC executives. The reports of these investigations should be provided to the FDIC Board by the outside firm. For such investigations against any other employee of the FDIC, the FDIC can either have such investigations conducted by a group comprised of individuals who have substantive competency and experience with anti-harassment policies, programs, and investigations that does not report to Legal Division’s Labor, Employment, and Administration Section or Division of Administration’s Labor and Employee Relations Section, and/or may utilize a third party to conduct investigations.
- c. Standard Operating Procedures (“SOPs”): The FDIC should develop a more robust SOP reflecting best practices for handling of complaints and investigations of the Anti-Harassment Policy and the newly created Anti-Fraternization Policy and Anti-Retaliation Policy. The SOP should address at least the following:
 - (1) Who can/will and cannot/will not be informed of a complaint;
 - (2) How a determination is made as to whether an investigation will be conducted;
 - (3) How to determine whether action needs to be taken during the pendency of an investigation to stop the conduct and/or separate individuals;
 - (4) How often the complainant will be provided a status update of the matter;
 - (5) What resources are available to support the complainant and the subject throughout the investigation;
 - (6) How and what will be communicated to the complainant, subjects, and witnesses about the conclusion of any investigation. Individuals must at

least be told that the investigation was completed, whether any allegations were found to be supported, and whether any action is being taken; and

(7) What factors management will take into consideration in making any disciplinary decisions, including specifically the risks to the complainant and the FDIC of not taking action or not taking more severe action.

- d. Disciplinary Follow-Up: Develop a process for assessing whether disciplinary action taken against an individual for violations of the Anti-Harassment Policy, the Equal Opportunity Policy, as well as any newly created Anti-Fraternization Policy and Anti-Retaliation Policy has been effective.
- e. Improved Record Keeping: Ensure systematic record keeping of all formal and informal complaints alleging conduct falling within the Anti-Harassment Policy, the Equal Opportunity Policy, as well as any newly created Anti-Fraternization Policy and Anti-Retaliation Policy, as well as records of associated investigatory and disciplinary actions. Create centralized repositories for records of complaints, investigations, disciplinary actions, and settlements, and ensure the FDIC can readily identify such complaints and their associated investigations, disciplinary actions, and/or settlements.

7. **Greater Transparency: Develop a more transparent and timely process for communicating about investigations into sexual harassment, all forms of discrimination, a hostile work environment, and other forms of interpersonal misconduct at FDIC.**

- a. Notice of Rights: Develop and share a notice of rights, encompassing relevant protections from time of complaint to resolution of complaint, for individuals who are complainants or the subject of complaints, including information contained in the revised SOPs and information on a complainant's rights under any newly created Anti-Retaliation Policy.
- b. Quarterly Reporting of Statistics: Develop and publish on the FDIC's website a quarterly summary report on violations of Anti-Harassment Policy, the Equal Opportunity Policy, as well as any newly created Anti-Fraternization Policy and Anti-Retaliation Policy. This summary must include, at minimum, the number of complaints made, a summary description of the allegations, number of investigations conducted, number of investigations that led to policy violation findings, and a summary of the range of penalties, discipline, or actions, whether imposed, taken as a result of, or made in connection with the investigation, which should include the number of each of the following: letters of counseling, letters of warning, demotions, transfers of office, role changes, and compensation changes.
- c. Annual Survey: Develop and implement an annual survey that solicits feedback on the effectiveness of the Anti-Harassment Policy, the Equal Opportunity

Policy, as well as any newly created Anti-Fraternization Policy and Anti-Retaliation Policy, as well as the procedures for taking complaints and conducting investigations related thereto. Publish the summary results of the feedback to FDIC employees.

Finally, we recommend that the FDIC develop a process for routine reporting on the implementation of these recommendations to the FDIC Board as well as to all FDIC employees.

CONCLUSION

Under the direction of the Board’s Special Review Committee, we have conducted an independent and thorough review. That review, which included reports from over 500 individuals into our hotline, interviews of another 167 individuals, and review of thousands of relevant documents, has revealed that far too many FDIC employees (substantially more than those who have previously reported internally) have suffered from sexual harassment, discrimination, and other forms of interpersonal misconduct for far too long. We find that aspects of the FDIC’s culture and structure—including a lack of accountability, fear of retaliation, a patriarchal, hierarchic, insular and risk-averse culture, power imbalances, insufficiently clear guidance and reporting channels, inadequate record-keeping, and an investigative process that lacks credibility internally—have contributed as root causes to the conditions that have allowed for this type of workplace misconduct to occur. We have presented in this Report recommendations that we believe will help address these root causes. By implementing the recommendations—with the commitment and understanding that change is necessary—the FDIC will emerge even stronger and continue to serve the public in its noble mission.

APPENDIX A

APPENDIX A

Examples of Allegations of Interpersonal Misconduct¹¹¹⁵

In “Allegations of Interpersonal Misconduct” in the “Factual Findings” Section of the Report, we included descriptions of a number of examples of allegations of workplace misconduct that we have learned about through the hotline, additional interviews, and review of the FDIC’s records to illustrate the types of allegations that have been raised, as it would be impractical to list and describe all of those allegations. As discussed in the Report, additional detail and descriptions about the examples in the “Factual Findings, Allegations of Interpersonal Misconduct” Section of the Report are set forth in this Appendix. The selected examples cover a range of conduct across the FDIC’s Divisions and Offices and are organized into allegations that fall into the following categories: (1) sexual harassment and relationships with subordinates; (2) gender-based discrimination; (3) other forms of harassment (including bullying); and (4) other forms of discrimination. In terms of numbers, in each category, there were many more reports made of these types and we include the descriptions as representative examples. As a number of the examples reflect, some of the allegations cover a number of overlapping categories of misconduct.

Certain of the allegations were reported and investigated internally, while most were not. Others, even if not internally reported, were corroborated through other witnesses, while some remain as simply allegations. Many individuals who reported incidents to us, but had not done so internally, noted that they feared retaliation. Although some of the allegations related to conduct from years ago, many have occurred recently, within the last few years. While certain of the reports were made by former FDIC employees, most of the reports came from current employees. In order to protect the identities, we have not disclosed below specific names of individuals involved and have set forth simply the general seniority and type of location implicated, and in certain circumstances, kept other potentially identifying information even more general.

I. Allegations of Sexual Harassment and Relationships with Subordinates

A. Sexual Harassment

Example 1

An employee reported through the hotline disturbing and ultimately sexually harassing interactions with an examiner that started six years ago and has continued to 2024. The employee originally met the examiner during her first bank examination. At her first bank examination, she arrived and was told to sit at a table facing the wall. It took two hours before anyone introduced themselves to her. During those hours, she observed the FDIC team arguing with each other and accusing each other of not doing their jobs competently. A more senior examiner noticed the dynamic and asked her to go for a walk to check in on her. During the walk he shared that one of the team members in the room often carried a gun to work.

¹¹¹⁵ Redactions have been made to certain descriptions in the public version of this Report to comply with the Privacy Act, preserve anonymity, and respect due process rights.

When they returned from the walk, that team member sat down next to her and said “fuck the FDIC, everyone here is so stupid.” This was her first exam experience. She was shaken—she recalled calling her mother during a break and crying. She spoke to her liaison from her intern program to express her discomfort with what happened at the exam. Her supervisor found out and told her that she should have gone to her supervisor first and not her liaison. She then understood that she was expected to report these types of things up “her chain of command” and not outside of it.¹¹¹⁶

The more senior examiner was put on exam teams with her and continued to check in on her. She was not bothered by this at the time, but her co-workers noticed he was paying her “extra attention” and warned her to be careful. She was also told that this more senior examiner was married with children but attempted to hide that from others. [REDACTED]

[REDACTED] After that, the more senior examiner texted her here and there but with neutral and friendly texts.¹¹¹⁷

Beginning around July of 2018, when she became a full-time noncommissioned examiner, the more senior examiner began to send her frequent text messages, sometimes late at night. He offered to help her get settled in, and, at the time she appreciated the offer. In hindsight, she believes he was attempting to groom her or get close to her in a romantic way. In 2019, her significant other pointed out that the late night texting from a colleague was weird, and she realized he was right and blocked the more senior examiner.¹¹¹⁸

In around January 2020, she ran into him at a bank exam. She recalls that he was very cordial and that others on the exam team told her that he seemed overly excited to see her. Later that evening, the phone in her hotel room rang and it was the more senior examiner. He was calling from the lobby of her hotel and asked her to go to dinner. She did not recall telling him what hotel she would be staying at; she reported feeling cornered given that he was more senior and so she went to dinner. At dinner, the more senior examiner said that he had tried calling her but that her number did not work. She panicked and promptly unblocked him. At dinner, he insisted on paying even though she was uncomfortable with that. He dropped her off at her hotel and she immediately spoke to another colleague about what had happened.¹¹¹⁹

The following week, she was staying at the Seidman Student Residence Center for a training, and it was her birthday. The more senior examiner texted her “Happy Birthday” and asked what room at the Center she was in. A while later, he sent her a box of expensive eternal roses. She knew they were expensive and it made her feel very uncomfortable.¹¹²⁰

¹¹¹⁶ Witness 605.

¹¹¹⁷ Witness 605.

¹¹¹⁸ Witness 605.

¹¹¹⁹ Witness 605.

¹¹²⁰ Witness 605.

After this, the more senior examiner began to send her increasingly sexual messages, including memes and images. One meme was of a woman in garters sitting on top of a man's shoulders and lowering her panties over the man's mouth like a face mask. The caption read, "[f]ace mask shortage problem solved." Another showed a partially clothed woman with a message saying, "Taking Henny shots with my girls be there soon, get naked B*tch." Another said "men twerk when they do missionary."¹¹²¹

The more senior examiner continued to text her in this manner for many months; she did not respond to his sexualized messages, and only responded to his non-sexualized messages. She said she did so because she had begun to fear for her physical security, and was concerned about how he might respond to being rejected given some of their initial conversations when he had been irate about her bringing up his [REDACTED].¹¹²²

At the same time that she was receiving this unwanted and unwelcome attention, she was experiencing her Field Office Supervisor making comments bragging about his sex life, making comments about her body and frequently humiliating people who complained, as discussed more below. As a result, she did not know who she could safely report this conduct to. On December 1, 2023, following the press coverage reporting about the FDIC and the launching of an investigation into her Field Office Supervisor, the employee made a complaint within the FDIC. A LERS specialist conducted an initial intake with her in early December.¹¹²³ On January 1, 2024, as she waited for the investigation to be conducted, she received yet another text message from the more senior examiner. This development was particularly upsetting to her because it seemed that nothing was happening with her complaint. On January 2, 2024, she emailed the LERS specialist to request that the more senior examiner be prohibited from speaking to her.¹¹²⁴ In early January 2024, the no contact order was finally issued.¹¹²⁵ [REDACTED]

[REDACTED]

Another employee reported to us through the hotline that this same examiner had recently been transferred to another position, which the first employee described as a "promotion." This other employee expressed concern that the transfer would give the examiner access to "vulnerable young women." This employee started at the FDIC with the examiner around 10 years ago. She said that from the beginning, he made advances toward women in the program, "obsessively" messaging this employee and other women as soon as

¹¹²¹ Witness 605.

¹¹²² Witness 605.

¹¹²³ Witness 605.

¹¹²⁴ Witness 605.

¹¹²⁵ Witness 605.

¹¹²⁶ [REDACTED]

multiple occasions as a “honeypot.”¹¹³⁸ The suggestion was made that she was used to “lure” the male colleague to join the team. When she objected that this characterization equated her to a prostitute, she informed us that the response was, “well come on, you’d sleep with [male colleague].” As another example, when the team developed projects that they needed to promote, she was told to “put on a bikini and sell it.” She noted that there has been no apology nor any acknowledgment of how such conduct is problematic. She reported feeling that it was up to her to figure out how to be professional and deal with it. This employee informed us that she was “nervous” to report misconduct and fearful of being “labeled as a complainer.”

This same employee described past complaints she had made. Around 2010, soon after she started at the FDIC, she was assigned to work in another region with a colleague who was “twice [her] age, twice [her] grade.” She reported his behavior as being “completely inappropriate.” He would come into her cubicle and get very close. He would go through her things, showing no respect for her space. During a work trip, he asked her to let his dogs out of his hotel room. She noted that it “did not feel right,” as she was not his assistant. When she went to his room to let the dogs out, she found that he had left used underwear on top of the leash, and she had to move his dirty underwear to get to the leash. She felt that she had been taken advantage of, as a younger woman, and treated in a way that a man in her situation would never have been treated. She reported this to human resources at the time and recalled being interviewed and a report written. She was not aware of the outcome of the investigation although the colleague remained employed at the FDIC.¹¹³⁹

This employee described, later in her career, having to work with a group of men who would use nicknames for women they found attractive. If a woman was wearing a dress, skirt, or anything they found attractive, they would tell their friends, who would come and stop by the woman’s cubicle. Once the employee realized that this was what the men were doing, she did not wear dresses or skirts for at least three years. This experience was pivotal in shaping how she felt about the culture and persuading her that she needed to be more careful. She tried not to give any signals that could be confused, such as being “too nice.” Still, she felt that one of the men in particular was targeting her. She reported him being “twice [her] age, twice [her] grade.” He would come by her cubicle more often. She became worried that he would follow her to the parking lot. She told her supervisor, another manager, and human resources about the situation, but she felt strongly that she should be the one to handle it. Around 2011 or 2012, when he came by her cubicle one day, she told him, “you’re making me completely uncomfortable.” He denied her allegation, responding, “I don’t know what you’re talking about.” She told us she understands that management and human resources knew about the man’s behavior, but he continued to be promoted. The employee shared these experiences with us although she admitted that it was very difficult to bring up experiences she had tried to push out of her thoughts.¹¹⁴⁰

¹¹³⁸ Witness 604.

¹¹³⁹ Witness 604.

¹¹⁴⁰ Witness 604.

Example 5

We heard from two employees that a commissioned examiner in a region made sexualized comments to them starting around January 2023.¹¹⁴¹ For example, the commissioned examiner asked them questions about whether they shaved their legs and made jokes with sexual innuendos.¹¹⁴² They informed us that his behavior made them extremely uncomfortable. If they complained to him about his comments, the commissioned examiner would remind them, “remember I’m filling out your [developmental feedback form],” “remember who is giving you feedback,” and “you have to pay your dues.”¹¹⁴³ They were scared of the commissioned examiner and feared retaliation. After an effort was made to address the situation, the commissioned examiner started to ignore the employees completely and refused to answer work-related questions.

Around October 2023, one of the employees worked with the commissioned examiner again. During one exam, he was the only commissioned examiner alongside a group of noncommissioned examiners. He acted inappropriately during that exam and everyone witnessed it. He continued to make inappropriate comments. This employee told her supervisor. After the public reporting in November, the employee was told a process was underway, but she was not provided with more information.¹¹⁴⁴

Example 6

An employee anonymously reported to us harassing conduct in headquarters. [REDACTED] Recently, she had “been subjected to sexual harassment by a peer for the past 18 months.” The peer monitored her social media. Once, the peer told her to bring a particular pair of shorts on a work trip. The peer repeatedly called her, calling almost 30 times on one occasion. She hesitated to report the peer’s behavior due to “the well-known lack of responsiveness to harassment complaints and potential for retribution,” as well as “out of fear it could adversely impact” her division’s and the FDIC’s operations, because the peer is a key member of the team and her division is understaffed. She contacted the Internal Ombudsman’s office about her experiences, and they encouraged her to report, but she fears potential repercussions for reporting. She referred to recent news reports about the FDIC’s workplace culture as “fresh evidence that no one cares,” which further deterred her from reporting. As she put it, “people talk” and “you become the problem.” She described herself as an employee with “a fierce dedication to the FDIC mission,” who was “coming to the realization that that commitment and dedication is one-sided.”¹¹⁴⁵

¹¹⁴¹ Witness 498; Witness 523.

¹¹⁴² Witness 498; Witness 523.

¹¹⁴³ Witness 498.

¹¹⁴⁴ Witness 498.

¹¹⁴⁵ Witness 136.

Example 7

A couple of individuals told us about sexual comments and gestures by an executive.¹¹⁴⁶ In a meeting in 2022, the executive allegedly made a comment describing his excitement about meeting a female colleague in person after a long time meeting only virtually by Teams and “[getting] to see her from the waist down.”¹¹⁴⁷ We asked the executive about this incident and he said he did not remember that comment and it would have been uncharacteristic of him.¹¹⁴⁸ On another occasion, around 2023, the executive allegedly looked the same colleague up and down in a way that made her very uncomfortable, and made a comment about her appearance.¹¹⁴⁹ Another witness anonymously reported witnessing this incident and being taken aback.¹¹⁵⁰

The witness told us about another incident from 2023 involving the executive’s conduct toward a different colleague. The witness described seeing the executive look a female colleague up and down and lick his lips as the colleague was walking away from a conversation with the executive.¹¹⁵¹

Example 8

An individual told us about unwelcome advances by an executive. She noticed a difference in his interactions with her and other colleagues. Other colleagues also noticed it, telling her that he was “sweet on her.” He would barge into her office to interact with her. On one occasion, he offered to let her use his massage gun.¹¹⁵² Another witness also reported this interaction to us.¹¹⁵³

The individual explained that she tried to keep her interactions with the executive professional and as brief as possible. She perceived that he was angered by her rejection and retaliated against her. In 2023, he decreed that her office [REDACTED] [REDACTED]. Around the same time, he allocated her the smallest bonus award on her team, which she believed to be incommensurate to the work she had done.¹¹⁵⁴

Example 9

An anonymous caller to the hotline told us that a now retired Field Office Supervisor harassed her.¹¹⁵⁵ Another employee corroborated the report.¹¹⁵⁶ [REDACTED] [REDACTED].

¹¹⁴⁶ Witness 296; Witness 482; Witness 630.

¹¹⁴⁷ Witness 630.

¹¹⁴⁸ Witness 296.

¹¹⁴⁹ Witness 630.

¹¹⁵⁰ Witness 482.

¹¹⁵¹ Witness 482.

¹¹⁵² Witness 446.

¹¹⁵³ Witness 274.

¹¹⁵⁴ Witness 446.

¹¹⁵⁵ Witness 72.

¹¹⁵⁶ Witness 626.

She reported that she believes she has been successful at the FDIC because she played into the culture that was expected. By way of example, she recalled being turned down for a promotion and told she was not the “right flavor of ice cream.” It was clear to her that a man, not a woman, was wanted for the position, but she did not file a complaint because she did not want to be put on an informal list of employees who were denied promotions because they were “squeaky wheels.”¹¹⁵⁷

She reported that one former Field Office Supervisor in question ([REDACTED]) would have her run personal errands, such as picking up his car. At lunch one day, he was discussing the difficulties he and his wife were having conceiving, and the costs associated with surrogacy. He looked at her and said, “I know I technically can’t ask you [to be a surrogate] since I’m your boss,” but he smiled and looked at her pointedly.¹¹⁵⁸ After she told him she would not do that, he turned to the other woman at the table and asked that woman. He once demanded that she let him stay over at her house for the weekend.

She learned from a colleague that the former Field Office Supervisor had developed romantic feelings for her. She said that he would send her flowers. He would often demand to know who she was talking to and what she was talking about. During mandatory telework, he would insist that she stay on Teams video for hours on end, directing her to leave the video on when she left to use the restroom. [REDACTED], he continued to send her flowers at home, and he continued to call, and text her work and personal phone.

This individual informed us that she grew so fearful that she went to her local police department. The police called him to warn him to stop contacting her, otherwise she would press charges and seek a restraining order. He stopped reaching out to her directly, but she understands that he has been contacting colleagues to ask about her whereabouts. As a result, she continues to live in fear because he continues to live near her home.

She never filed a complaint because the FDIC’s culture had been instilled in her, and she believed the FDIC would believe him over her if she reported it. She told us that it was not until [REDACTED] that she felt comfortable trying to address the situation and share what happened. She reported her experiences to management above her level [REDACTED], but she felt they dismissed her concerns.¹¹⁵⁹

Example 10

An employee told us about an unwelcome advance by a former executive. A few years ago, she developed a rapport with the executive after she participated in a detail in his office. She later asked him to serve as her executive sponsor after she was selected to participate in another program. He suggested that they meet for lunch to discuss this request. On their way back from lunch, he started asking questions about where she lived and how far away it was from where they were. After she responded that she lived about three miles away, he responded, “we can get there and back before the end of the day.” This made her extremely

¹¹⁵⁷ Witness 72.

¹¹⁵⁸ Witness 72.

¹¹⁵⁹ Witness 72.

uncomfortable. She felt like the executive was propositioning her and if she did not agree, he would not sponsor her for the program. She ultimately found another sponsor for the program.

The employee explained that she told a mentor about the incident and how it upset her. The mentor minimized her experience, stating “well you’re a beautiful woman and to me, it sounds like you just disarmed him.” Based on that response, the employee did not think senior leadership would take any action, and she did not raise the issue further.¹¹⁶⁰

Example 11

Two individuals reported to us interactions with a commissioned examiner in a region, when they were noncommissioned examiners.¹¹⁶¹

One of the individuals had several assignments with the commissioned examiner while she was a noncommissioned examiner at the FDIC. They were traveling together, so they ate their meals and spent time together. The commissioned examiner started with “smaller things,” like asking about the employee’s relationship status. Then he “progressively became more aggressive about wanting to know about [her] personal life.”¹¹⁶² He followed her on social media, began to leave comments on her pictures, and sent her posts. Because his behavior made her extremely uncomfortable, she told him to stop and blocked him on social media.¹¹⁶³

She informed us that following that, he only became “more intense.” While working together one time, “he would not stop complimenting [her].” It was “way past the point of [her] feeling comfortable.” She asked the employee to stop and indicated that she’d like to keep her personal and professional lives more separate. He sent a long response saying he understood, but after she did not reply, he continued to send her emails and messages on social media.¹¹⁶⁴

The commissioned examiner once sent the other individual a book about how to manage a health condition, after he had overheard a conversation between her and another colleague about that health condition.¹¹⁶⁵ He sent the package to her home address, which he had gotten when he previously asked the office for addresses for a different purpose.¹¹⁶⁶

The two individuals asked older colleagues for advice on what to do.¹¹⁶⁷ They were encouraged to report the commissioned examiner’s conduct, and the FDIC did an investigation.¹¹⁶⁸ One of the individuals recalled that when she was interviewed, she was

¹¹⁶⁰ Witness 497.

¹¹⁶¹ Witness 486; Witness 259.

¹¹⁶² Witness 259.

¹¹⁶³ Witness 259.

¹¹⁶⁴ Witness 259.

¹¹⁶⁵ Witness 486.

¹¹⁶⁶ Witness 486.

¹¹⁶⁷ Witness 486; Witness 259.

¹¹⁶⁸ Witness 486; Witness 259; Witness 610.

employee shared that once, during a work trip, the more senior examiner said he wanted to stop somewhere, which turned out to be a brothel.¹¹⁸²

Both employees explained that it was well known in the office, including by the Field Office Supervisor, what occurred on these trips.¹¹⁸³ Colleagues would say that visiting prostitutes was the more senior examiner's "hobby."¹¹⁸⁴ As one of the employees observed, "you know that it's not right, but since the behavior is obviously well-known and joked around in the office," you come to think that this is "accepted behavior."¹¹⁸⁵

B. Relationships with Subordinates

Example 16

Dozens of FDIC employees told us about a former executive who was known to have relationships with subordinates, including [REDACTED].¹¹⁸⁶ His reputation was "well-traveled," as one employee put it,¹¹⁸⁷ and "everyone in the country knew him by reputation," as another said.¹¹⁸⁸ Because of this reputation, it was known that you "never wanted to be caught behind closed doors with him in his office"¹¹⁸⁹ or "never to stay in the office alone with him at night."¹¹⁹⁰ Likewise, female employees were cautioned "never be in a room alone with [him], never go to dinner with [him],"¹¹⁹¹ and to "be careful" around him.¹¹⁹² An employee, who told us about this former executive having relationships with subordinates, explained that he finds it problematic that there is a culture of colleagues pursuing each other and dating, because it sets a tone and creates an atmosphere in which supervisors may believe it is acceptable to date subordinates, despite the power imbalances involved in such relationships.¹¹⁹³ Another employee we spoke with expressed regret for not reporting the former executive, in case she may have been able to shield others from his behavior. She added that she had not said anything because "it would not have ended well" for her.¹¹⁹⁴

Although the former executive's behavior appears to have been widely known—at least within the regions where he worked—it was never addressed by

¹¹⁸² Witness 602.

¹¹⁸³ Witness 363; Witness 602.

¹¹⁸⁴ Witness 602.

¹¹⁸⁵ Witness 363; Witness 602.

¹¹⁸⁶ Witness 489; Witness 382; Witness 567; Witness 427; Witness 658; Witness 199; Witness 472; Witness 622; Witness 386; Witness 477; Witness 623; Witness 613; Witness 460; Witness 422; Witness 535; Witness 563; Witness 518; Witness 401; Witness 458; Witness 312; Witness 352; Witness 490; Witness 281; Witness 481; Witness 529; Witness 251; Witness 333; Witness 673; Witness 403; Witness 459; Witness 362; Witness 471; Witness 416; Witness 302; Witness 324; Witness 374.

¹¹⁸⁷ Witness 658.

¹¹⁸⁸ Witness 460.

¹¹⁸⁹ Witness 460.

¹¹⁹⁰ Witness 486.

¹¹⁹¹ Witness 529.

¹¹⁹² Witness 472.

¹¹⁹³ Witness 490.

¹¹⁹⁴ Witness 386.

management.¹¹⁹⁵ The former executive was mentioned to us repeatedly as an example of an employee whom management moved around instead of holding him accountable.¹¹⁹⁶ He also was cited as an example of management rewarding bad behavior.¹¹⁹⁷ Several hotline callers suggested that after the former executive [REDACTED] a subordinate, he was promoted.¹¹⁹⁸ Around 2017, the former executive was reassigned from one executive position to another, which many employees saw as a promotion.¹¹⁹⁹ The handling of this situation formed part of the “legend” or “lore” that dissuaded complaints at the FDIC.¹²⁰⁰ We were told it sent the message that “there would be no consequences for managers engaging in misconduct” and “there was no point complaining about sexual harassment.”¹²⁰¹ [REDACTED]

One employee reported anonymously that within the last 10 years, she had dinner with the former executive. During dinner, he asked a few times about a career-related issue he had previously assisted with. After dinner, he invited her to his room for a drink. While the former executive did not explicitly say “you owe me one,” she felt that was what he was expecting, which made her feel extremely pressured and very uncomfortable. When he made sexual advances, she gave in and had sexual relations with him. She never told anyone about this incident before reporting to our hotline, [REDACTED] and he was known to be a powerful person at the FDIC.¹²⁰²

[REDACTED]
[REDACTED]¹²⁰³
[REDACTED]¹²⁰⁴

Example 17

Several employees said they had heard of an employee (who was then a manager) in headquarters having relationships with one or two subordinates.¹²⁰⁵ We asked the employee about these allegations and he denied them.¹²⁰⁶ Around 2018, he moved to a different division.¹²⁰⁷ Another employee who was in the division he joined observed that

¹¹⁹⁵ Witness 460.

¹¹⁹⁶ Witness 658; Witness 514; Witness 566; Witness 459; Witness 563.

¹¹⁹⁷ Witness 136.

¹¹⁹⁸ Witness 302; Witness 472; Witness 403.

¹¹⁹⁹ Witness 329; Witness 302; Witness 386.

¹²⁰⁰ Witness 458.

¹²⁰¹ Witness 458.

¹²⁰² Witness 518.

¹²⁰³ Witness 333.

¹²⁰⁴ Witness 673.

¹²⁰⁵ Witness 502; Witness 379; Witness 416; Witness 260; Witness 490; Witness 422; Witness 246; Witness 477; Witness 313; Witness 639; Witness 451; Witness 271.

¹²⁰⁶ Witness 560.

¹²⁰⁷ Witness 502; Witness 560.

although he came in with no experience, he had a higher grade than all of them.¹²⁰⁸ He was cited as another example of employees who “just keep[] getting moved around”¹²⁰⁹ and do not face appropriate repercussions.¹²¹⁰

Example 18

A former senior examiner in a region has been cited as another example of male managers at the FDIC facing insufficient sanctions for misconduct.¹²¹¹ He had a relationship with a subordinate.¹²¹² The FDIC found that he had once gone to a bar with the subordinate along with another employee whom he supervised and drank during work hours. Even after the subordinate had informed him she was only interested in a professional relationship, during work hours he expressed his continued feelings to her and he instructed the subordinate to meet with him, at which time he asked if they had a chance for a personal relationship. He told another employee whom he supervised of his romantic feelings for the subordinate and that he had slept with her. Management initially proposed terminating the senior examiner’s employment, but the penalty was mitigated to a demotion and a reassignment to another office. He appealed the decision to the Merit Systems Protection Board, which affirmed the agency’s demotion and reassignment.¹²¹³

Example 19

Multiple employees told us that they had heard of a former manager in a region having a relationship with a subordinate and pursuing women in the office.¹²¹⁴ That conduct was not addressed in a way that was apparent to any of the employees who spoke to us. We heard that instead, after it was discovered that the former manager was having a relationship with a direct report, he was assigned to a detail [REDACTED].¹²¹⁵ The perception was that “he got a great opportunity [REDACTED]” and got to resume his role afterwards.¹²¹⁶

Example 20

Employees reported to us that a Field Office Supervisor was caught having sex with one of his subordinates in his office.¹²¹⁷ Afterwards, he was reported to have been moved to a non-supervisory position with the same pay.¹²¹⁸ This story is cited as another example of management simply moving an employee and not sufficiently reprimanding him.¹²¹⁹ As one

¹²⁰⁸ Witness 271.

¹²⁰⁹ Witness 260; Witness 490.

¹²¹⁰ Witness 422; Witness 458; Witness 313.

¹²¹¹ Witness 443.

¹²¹² Witness 362; Witness 443; Witness 404; Witness 422; Witness 503; Witness 613.

¹²¹³ *MSPB Final Decision* (Feb. 28, 2023).

¹²¹⁴ Witness 416; Witness 352; Witness 487; Witness 460; Witness 386; Witness 627; Witness 472; Witness 427.

¹²¹⁵ Witness 487; Witness 528; Witness 472.

¹²¹⁶ Witness 487.

¹²¹⁷ Witness 610; Witness 582.

¹²¹⁸ Witness 610; Witness 582.

¹²¹⁹ Witness 582.

employee explained, this illustrates how the FDIC “never deals with people that are problems,” and just moves them instead.¹²²⁰

Example 21

Multiple employees told us that a former Field Office Supervisor was known to pursue and have relationships with junior members of the FDIC staff, including student interns.¹²²¹ A number of individuals informed us that on one occasion, he was reported to the regional office after he was caught having a relationship with an intern, but nothing happened to him as a result.¹²²² The former Field Office Supervisor was subsequently investigated for misconduct relating to his dealings with a bank and action was taken such that [REDACTED].¹²²³ An employee who reported to us contrasted management’s handling of those allegations, with the tolerance shown toward relationships with subordinates: “What message does that send to women? If you prey upon women that’s fine. But if you [engage in other types of misconduct], that’s gone too far.”¹²²⁴

Example 22

Over a dozen employees told us that another former executive had a reputation as a womanizer.¹²²⁵ Some had heard of him having relationships with subordinates.¹²²⁶ He also was known as someone you had to “watch out for”¹²²⁷ and “be careful around.”¹²²⁸ Employees described him pursuing women [REDACTED]. He was “just moved . . . around to different [REDACTED].”¹²²⁹ He was an example of management moving employees with “issues” around the FDIC instead of terminating their employment.¹²³⁰ Management “swept [his misconduct] under the rug.”¹²³¹

One employee shared an experience she had with the former executive.¹²³² During a work trip, she had dinner with a group, including the former executive. After dinner, the guys decided they were going to a strip club. She did not feel that she could ask to be taken back to the hotel because she did not want to be the one putting a damper on the evening. She called herself a cab from the club as soon as she could. After her cab arrived, one of her

¹²²⁰ Witness 582.

¹²²¹ Witness 306; Witness 534; Witness 649; Witness 566; Witness 669.

¹²²² Witness 534; Witness 602; Witness 567.

¹²²³ Witness 669; Witness 306; Witness 534; Witness 567; Witness 552; Witness 602.

¹²²⁴ Witness 602.

¹²²⁵ Witness 324; Witness 190; Witness 459; Witness 502; Witness 416; Witness 199; Witness 490; Witness 352; Witness 566; Witness 669; Witness 422; Witness 613; Witness 623; Witness 391; Witness 564; Witness 622; Witness 472; Witness 658; Witness 557; Witness 489.

¹²²⁶ *E.g.*, Witness 490; Witness 669; Witness 416.

¹²²⁷ Witness 193.

¹²²⁸ Witness 472.

¹²²⁹ Witness 190; Witness 514.

¹²³⁰ Witness 158.

¹²³¹ Witness 422.

¹²³² Witness 391.

colleagues asked if she could take the former executive back to the hotel, as he was being thrown out of the club for inappropriately touching dancers.¹²³³

During the cab ride, the former executive asked her, “does your husband eat you?” She was stunned by what he had said and did not know what to say. She ended up responding that she had that taken care of and handled. When the cab pulled up to the hotel, she jumped out and got back to her room. She told her husband but never reported it, because she did not know who to tell or what to do since she thought that no one would believe her. As she explained, “What am I going to do, report the [former executive’s position].” If you tell, “you’ll be the first to be shipped to Timbuktu.” She said that employees feared they would not get a promotion or decent assignments if they made complaints. As she said, “If you caused trouble or spoke up too much, then you wouldn’t be looked upon favorably.” That experience “shook [her] to the core.”¹²³⁴

The rumor she heard is that the FDIC ultimately moved the former executive because he made an advance on a non-FDIC employee, who called headquarters. Her view was that management would only address it if it was “coming from an outside source.” She understood that the former executive [REDACTED] and told to stay out of trouble, until he was eligible for retirement.¹²³⁵

Others shared this employee’s understanding that the FDIC intervened “only after a non-FDIC employee” complained about the executive making advances toward her.¹²³⁶ They told us that the FDIC conducted an investigation into that allegation around the mid-2000s. There is a perception that “the only repercussion was that [the executive] [REDACTED] so he could retire.”¹²³⁷

Example 23

We heard from several individuals about a former manager who was having an affair with his subordinate.¹²³⁸ They reported that the former manager helped get that person a promotion. They told us the former manager was transferred to [REDACTED].¹²³⁹ This case was cited as another example of the FDIC transferring employees to different positions and failing to hold them accountable.¹²⁴⁰

Example 24

Several employees reported that a former executive was notorious for pursuing young women in the 1980s and early 1990s.¹²⁴¹ We heard from one employee that the office

¹²³³ Witness 391.

¹²³⁴ Witness 391.

¹²³⁵ Witness 391.

¹²³⁶ Witness 391.

¹²³⁷ Witness 458; Witness 324.

¹²³⁸ Witness 191; Witness 690; Witness 477; Witness 416.

¹²³⁹ Witness 191; Witness 690.

¹²⁴⁰ Witness 191; Witness 477.

¹²⁴¹ Witness 121; Witness 613; Witness 658; Witness 459; Witness 422.

“would do everything in their power to surround” the young women to keep them away from the former executive.¹²⁴² Others would remark, “that’s just [former executive],” while warning young women to “be careful.”¹²⁴³ He would pursue “people much lower in his chain of command,” who would have concerns about the impact on their careers if they made a report.¹²⁴⁴ One employee shared with us that although she had experience and qualifications, she was unable to be promoted because she was not part of the group of women whose careers the former executive sponsored.¹²⁴⁵ That group of women was given a nickname relating to the former executive that is still used to this day to refer to them.¹²⁴⁶

II. Other Allegations Including Gender-Based Discrimination

Example 1

Many FDIC employees reported interactions with a current Field Office Supervisor that included sexual harassment, harassment, discrimination, and generally conduct that can be characterized as bullying. This conduct has lasted for years. To begin with, many employees viewed this Field Office Supervisor as having a leadership style that created a hostile workplace. They reported that the Field Office Supervisor engaged in publicly humiliating employees and hazing behavior.¹²⁴⁷ He repeatedly told people that offered what he viewed to be complaints that they were engaged in “stinkin’ thinkin” and coached other employees to use the same phrase and address complaints in the same manner.¹²⁴⁸ [REDACTED]

[REDACTED]¹²⁴⁹ He insulted or yelled at his supervisees,¹²⁵⁰ and liked to grill them with questions as a hazing exercise.¹²⁵¹ One new member of the field office described being coached to make sure she responded, “I know nothing about nothing” if she was asked a question, as that was the Field Office Supervisor’s preferred response and otherwise, he would humiliate you.¹²⁵² One woman said that when she started in the office, the Field Office Supervisor started screaming at her and gave her “thirty minutes of what is wrong with you.”¹²⁵³ She described it as like being on “a vicious hamster wheel.”¹²⁵⁴ Another employee said that he called them an “idiot.” That employee described the Field Office Supervisor as “very explosive.”¹²⁵⁵ He told one employee that if she didn’t like what he had to say, she

¹²⁴² Witness 459.

¹²⁴³ Witness 459.

¹²⁴⁴ Witness 459.

¹²⁴⁵ Witness 121.

¹²⁴⁶ Witness 613.

¹²⁴⁷ Witness 363; Witness 263.

¹²⁴⁸ Witness 605.

¹²⁴⁹ Witness 333; [REDACTED]

¹²⁵⁰ Witness 449; Witness 274.

¹²⁵¹ Witness 263; Witness 602.

¹²⁵² Witness 605.

¹²⁵³ Witness 274.

¹²⁵⁴ Witness 274.

¹²⁵⁵ Witness 363.

should leave the field office altogether, which she understood as a threat.¹²⁵⁶ Many of them made deliberate efforts to avoid him in the workplace when possible, such as by going to bathrooms on a different floor.¹²⁵⁷

Not everyone in this field office had this experience with the Field Office Supervisor because he created an inner-circle of loyal employees by fostering an in group and an out group, and rewarded those in the in group.¹²⁵⁸ Those in the out group were treated poorly and got bad assignments, and were not liked.¹²⁵⁹ One employee said that when she first joined this field office one of the first things that stood out was “how grown adults were bending over backwards” to do what the Field Office Supervisor wanted.¹²⁶⁰ That employee also described the Field Office Supervisor as engaging in mind-games, such as telling one person, “I don’t think it’s good for you to be praised this much; it’ll get to your head and you will lose your humility.”¹²⁶¹ Many employees described this Field Office Supervisor as having created a “fiefdom,” where he controlled his field office, with little oversight from outside of it.¹²⁶² When people tried to leave, the Field Office Supervisor reacted in ways that caused people to be concerned that if they did not get positions they posted for, the Field Office Supervisor would treat them worse for having considered leaving.¹²⁶³ He told others that they should “only be listening to him” and that their “number one job was to protect the leadership in the office”—meaning him.¹²⁶⁴

The Field Office Supervisor’s conduct led to employees within this field office believing that reporting the Field Office Supervisor would be disloyal and would lead to retaliation. [REDACTED]

[REDACTED].¹²⁶⁵ As a result, for years many employees in this field office tolerated the above-described conduct, as well as being subject to comments of a sexual or sexualized nature. For example, the Field Office Supervisor made comments about a woman’s breasts during meetings such as, “Sorry, I wasn’t listening to anything you said, I was too distracted by your tits.”¹²⁶⁶ On at least two occasions, the Field Office Supervisor referred to the inclusion of female employees on interview panels as “boobs on the panel.”¹²⁶⁷ One woman learned that the Field Office Supervisor had spoken about how good her legs and backside looked.¹²⁶⁸ He told this same woman several times that he could not stop looking at her body because she clearly had been working out.¹²⁶⁹ He regularly spoke

¹²⁵⁶ Witness 449; Witness 333.

¹²⁵⁷ Witness 333.

¹²⁵⁸ Witness 587; Witness 349.

¹²⁵⁹ Witness 587; Witness 283.

¹²⁶⁰ Witness 605.

¹²⁶¹ Witness 605.

¹²⁶² Witness 587; Witness 169.

¹²⁶³ Witness 283.

¹²⁶⁴ Witness 605.

¹²⁶⁵ Witness 605; [REDACTED]

¹²⁶⁶ Witness 284.

¹²⁶⁷ Witness 284; Witness 587.

¹²⁶⁸ Witness 605.

¹²⁶⁹ Witness 605.

about his sex life with other employees (for example, saying he was in a good mood because he had sex with his wife)¹²⁷⁰ and described himself as a “breast guy” and a “butt guy” in front of others.¹²⁷¹ The Field Office Supervisor commented on one employee’s weight and compared her to other women in the office who were slimmer, and suggested that she get a gym membership.¹²⁷² He was perceived to be openly flirting with certain women in the office, telling one, “you have a smaller bone structure than my wife” and that “none of the other women in the office are my type.”¹²⁷³ One woman recalled that when she wore a V-neck sweater, the Field Office Supervisor told her that she looked “fetching” and, while staring at her cleavage, told her that she should wear more things like that.¹²⁷⁴ Another alleged that on one occasion, he ran his bare foot down her arm.¹²⁷⁵

The Field Office Supervisor made disparaging race-based comments as well.¹²⁷⁶ Several FDIC employees reported that these comments were largely directed toward people of Asian-descent, and, in particular, Asian men.¹²⁷⁷ For example, he made fun of their clothing¹²⁷⁸ and suggested that they were not manly.¹²⁷⁹ In another instance, the Field Office Supervisor told an employee that a dress she was wearing was too formfitting.¹²⁸⁰ When she pointed out another person was wearing a similar dress, he responded, “She’s a Black woman, they always dress like that.”¹²⁸¹

The Field Office Supervisor also made fun of gay men¹²⁸²—he mimicked a gay employee in a “simpering tone”¹²⁸³ and on at least one occasion attempted to shame a gay man for what he wore outside the office.¹²⁸⁴ [REDACTED]
[REDACTED].¹²⁸⁵ He confronted this employee at work with the photo,¹²⁸⁶ [REDACTED]
[REDACTED].¹²⁸⁷ [REDACTED]

¹²⁷⁰ Witness 605.

¹²⁷¹ Witness 605.

¹²⁷² Witness 605.

¹²⁷³ Witness 449.

¹²⁷⁴ Witness 602.

¹²⁷⁵ Witness 284.

¹²⁷⁶ Witness 449; Witness 283; Witness 263.

¹²⁷⁷ Witness 284; Witness 283.

¹²⁷⁸ Witness 263; Witness 349.

¹²⁷⁹ Witness 284.

¹²⁸⁰ Witness 333.

¹²⁸¹ Witness 284.

¹²⁸² Witness 284; Witness 441; Witness 451.

¹²⁸³ Witness 284.

¹²⁸⁴ Witness 284.

¹²⁸⁵ Witness 284; [REDACTED]

¹²⁸⁶ Witness 284.

¹²⁸⁷ [REDACTED]

Finally, he berated an employee who had a documented disability and stuttered.¹²⁸⁹

On three occasions prior to June 2023, some of the conduct of this Field Office Supervisor came to the attention of senior managers in the regional office. In 2018, a senior manager in the regional office became aware of issues with the Field Office Supervisor’s “tone and approach” and asked him to be “more thoughtful and deliberate in his interactions so he could make sure to convey respect.”¹²⁹⁰

On another occasion, a different senior manager confronted the Field Office Supervisor about having said in a meeting that those at an event the Field Office Supervisor had organized “were like drinking out of a teat.”¹²⁹¹ In response, the Field Office Supervisor crossed his arms and said, “Are we done here?”¹²⁹² No further action was taken after this meeting.

On a third occasion in 2022, the same senior manager in the regional office who raised issues to the Field Office Supervisor in 2018 reviewed information from an anonymous Open Exchange mailbox and from the FEVS results indicating that Field Office Supervisor led through fear and was creating a toxic work environment, including by playing favorites and giving people he did not like worse assignments.¹²⁹³ Some comments specifically said that women were getting less favorable assignments and others generally had a “gender component.”¹²⁹⁴ In response, the senior manager of the regional office convened a meeting with the Field Office Supervisor and some of his direct reports.¹²⁹⁵ She confronted them with the FEVS results and told them that they needed to fix the situation.¹²⁹⁶ She told us that the Field Office Supervisor and his direct reports at this meeting did not “take it seriously” and said that the people complaining were “just disgruntled.”¹²⁹⁷ She chastised them to take the comments seriously and hold each other accountable.¹²⁹⁸ She also commissioned a study of assignments in the field office that she told us did not show any gender-based trends.¹²⁹⁹

1288 [REDACTED]

1289 Witness 363; Witness 263; Witness 283.

1290 Witness 441.

1291 Witness 554.

1292 Witness 554.

1293 Witness 441.

1294 Witness 441.

1295 Witness 441.

1296 Witness 441.

1297 Witness 441.

1298 Witness 441.

1299 Witness 441.

Finally, she had this Field Office Supervisor participate in a Field Supervisor Council so he could observe the conduct of other Field Office Supervisors.¹³⁰⁰

No report was made by anyone regarding any of this conduct and no investigations were requested by any manager until May 2023. [REDACTED]

[REDACTED].¹³⁰¹ Thereafter, the same senior manager from the regional office who had spoken with the Field Office Supervisor in 2018 and 2022, raised concerns about the Field Office Supervisor’s management and a potential hostile work environment based on what she learned in 2022 and in recent discussions with an employee.¹³⁰² While LEAS, LERS, and the senior manager from the regional office were considering next steps, two individuals informed the senior manager from the regional office that they had been contacted by a reporter from the *Wall Street Journal*, who told them that an article was being written about sexual harassment and inappropriate sexual relationships at the FDIC.¹³⁰³

[REDACTED].¹³⁰⁴

[REDACTED].¹³⁰⁵

Example 2

Several employees told us about ongoing discriminatory treatment of women by a manager in a particular region.¹³⁰⁶ Most of them described a “boys club” environment in which the favorites are awarded good assignments and bonuses.¹³⁰⁷ The employees reported that the manager favored men in awarding bonuses.¹³⁰⁸ In a recent bonus cycle, no women received a bonus.¹³⁰⁹ There was at least one instance where men, not women, were advised to be prepared to advocate for a bonus.¹³¹⁰ As a result, the women did not have the benefit of preparing beforehand to advocate for their bonuses, unlike the men.¹³¹¹

They also described the manager marginalizing women. One employee told us that the manager tried to “shut [women] up” during meetings.¹³¹² Another said that at an internal meeting, the women were the only participants who were not asked to present on their work, which made it seem as if the women were not contributing.¹³¹³ In addition, women were

¹³⁰⁰ Witness 441.

¹³⁰¹ [REDACTED]

¹³⁰² Witness 441.

¹³⁰³ Witness 449; Witness 605.

¹³⁰⁴ [REDACTED]

¹³⁰⁵ [REDACTED]

¹³⁰⁶ Witness 330; Witness 180; Witness 540; Witness 573.

¹³⁰⁷ Witness 180; Witness 540; Witness 573.

¹³⁰⁸ Witness 330.

¹³⁰⁹ Witness 180.

¹³¹⁰ Witness 573.

¹³¹¹ Witness 573.

¹³¹² Witness 330.

¹³¹³ Witness 180.

excluded from high-level external meetings, which an employee thought reflected management’s belief that women are not qualified.¹³¹⁴

Most of the employees shared that they have experienced retaliation by the manager.¹³¹⁵ This includes the manager micromanaging employees, assigning them extra work, and threatening to downgrade performance ratings.¹³¹⁶

A couple of employees told us that it was pointless to go to the manager’s supervisor, because the manager’s supervisor brought issues back down “the chain.”¹³¹⁷ They explained that there have been no repercussions for the manager’s conduct, so he has become more empowered over time.¹³¹⁸ They also described a pattern of transferring employees out of the group, while keeping management in place.¹³¹⁹ One of the employees expressed the view that “LERS is there to protect management and not help us.”¹³²⁰

Example 3

An employee told us about an incident in a region around late 2018 or early 2019. As a bank examination was ending, the examiner-in-charge was discussing a follow-up review that would start several months later. He asked the participants in the review if they would be available to assist. A state examiner said she would be unable to attend the review, sharing that she was expecting a baby around then. The examiner-in-charge responded: “[w]ell maybe if you had kept your legs closed, you would be able to help out.”¹³²¹

The employee explained to us that he learned that the state examiner had escalated the issue at her agency, which then contacted the FDIC regional office. The employee also reported the comment to his supervisor. The examiner-in-charge later told the employee that he had been called to the FDIC regional office to discuss the issue with an executive. According to the examiner-in-charge, after the examiner-in-charge provided an explanation to the executive, the executive responded that he did not think the comment was all that bad and that the examiner-in-charge needed to get back to work. Around the middle of 2023, the employee learned from the state examiner that the examiner-in-charge had told the state examiner about his interaction with the FDIC regional office and bragged that it was not the first time he had made such comments and gotten away with it.¹³²²

¹³¹⁴ Witness 180.

¹³¹⁵ Witness 330; Witness 180; Witness 573.

¹³¹⁶ Witness 330; Witness 573.

¹³¹⁷ Witness 180; Witness 540.

¹³¹⁸ Witness 180.

¹³¹⁹ Witness 180; Witness 540.

¹³²⁰ Witness 573.

¹³²¹ Witness 306.

¹³²² Witness 306.

We interviewed the executive in the regional office. He said he recalled the FDIC examiner-in-charge having some issue with a state examiner who was pregnant and that he did not recall the details, nor did he recall the specific comment.¹³²³

Example 4

Nearly a dozen FDIC employees reported interactions with a former Field Office Supervisor that included sexual harassment, harassment, discrimination, and generally offensive conduct. This conduct went on for years before a group of employees reported it through multiple internal FDIC channels. As a result of the lengthy time period in which this conduct occurred, the internal FDIC investigation that followed was not able to include interviews with certain former employees who reached out to the hotline to report their experiences with this Field Office Supervisor. Those details are included here, as well as those that were reported internally.

Employees who joined the field office where this Field Office Supervisor was based reported being warned that he “doesn’t do well with women.”¹³²⁴ Over the years, women in this field office received unwanted attention from this Field Office Supervisor that was observed by others on some occasions, and the Field Office Supervisor frequently made comments that were gender-based about women. For example, he routinely would make comments about the physical appearance of women in the office, including how pretty they were, how they probably used to be “hot” when they were younger,¹³²⁵ or how well their clothes fit.¹³²⁶ He once commented that a woman was “too fat to fuck,”¹³²⁷ and on another occasion, suggested that the same woman obtain her “MRS” title.¹³²⁸ This Field Office Supervisor’s comments about women were so frequent that he reported having been told by his former supervisor that his career would go better if he “could keep his dick in his pants.” The Field Office Supervisor repeated this comment with pride to others in the office who reported to him.¹³²⁹ When another employee in the field office sent an email with sexualized content about an employee’s initials being “BJ” and thus “a mouthful,”¹³³⁰ this Field Office Supervisor responded by saying employees should not say “things in front of the ladies in the office” like that. The Field Office Supervisor took no other action in response to this email other than to chastise the employees not to send emails like that in the future.¹³³¹

The Field Office Supervisor’s unwelcome conduct toward women was not limited to comments. One woman reported that around 2007, during her first year at the FDIC, this Field Office Supervisor arrived for an assignment and called the examiner-in-charge to get

¹³²³ Witness 422.

¹³²⁴ Witness 451.

¹³²⁵ Witness 451.

¹³²⁶ Witness 574.

¹³²⁷ Witness 653.

¹³²⁸ Witness 451, Witness 653.

¹³²⁹ Witness 451.

¹³³⁰ Witness 451; Witness 653.

¹³³¹ Witness 451.

a ride from the airport.¹³³² The examiner-in-charge told her that this Field Office Supervisor said he specifically wanted this woman to pick him up from the airport. The examiner-in-charge acknowledged that this was “weird.” The woman picked up the Field Office Supervisor. During this ride, while he was discussing her career aspirations, the Field Office Supervisor put his hand on her knee. She immediately moved her knee away and felt “very uncomfortable.” After that interaction, the woman said that the Field Office Supervisor would “look her up and down” in a way that continued to make her feel uncomfortable. She did not tell anyone about those interactions and did not want to make a big deal about the situation because she was new. She later chose to work in a different division than the Field Office Supervisor, in part to get away from him.¹³³³

Employees in this Field Office Supervisor’s field office were also aware that he was encouraging his male subordinates to join him in activities such as massage parlors,¹³³⁴ Vietnamese coffee shops where women in string bikinis served drinks,¹³³⁵ and strip clubs.¹³³⁶ Some of the male subordinates who joined the Field Office Supervisor in these activities felt pressured to do so to “preserve” their relationship with the Field Office Supervisor, who was their supervisor and controlled many aspects of their work assignments.¹³³⁷ As one FDIC employee said, “It’s a supervisor inviting you to these things, so it’s like, how do we separate the two? How do you respond to a manager inviting you?”¹³³⁸ One of the male subordinates said that on one occasion while at a Vietnamese coffee shop with this Field Office Supervisor, the Field Office Supervisor discussed the idea of paying a woman to be his girlfriend, discussed prices for such an arrangement, and solicited the views of his colleagues on whether this was a good idea. This male subordinate reported being told he “wasn’t part of the team” if he didn’t go with them to a club where women were topless. At this club, the Field Office Supervisor had arranged sexual massages for his subordinates. On one work trip to conduct an exam out of state, the Field Office Supervisor routinely texted other men on the FDIC team about “picking up prostitutes.”¹³³⁹

One male subordinate stopped attending outings with the Field Office Supervisor to these clubs, and reported falling out of favor after and not being considered part of the “boys’ club” in the office anymore.¹³⁴⁰ Another said that he knew not attending would lead to a “combative relationship with my supervisor.”¹³⁴¹ When one of the male subordinates reported by email on these excursions as the reason employees were showing up late to work,

¹³³² Witness 497.

¹³³³ Witness 497.

¹³³⁴ Witness 451.

¹³³⁵ Witness 451; Witness 283; Witness 359.

¹³³⁶ Witness 451; Witness 307.

¹³³⁷ Witness 451; Witness 359.

¹³³⁸ Witness 359.

¹³³⁹ Witness 451.

¹³⁴⁰ Witness 451.

¹³⁴¹ Witness 359.

the Field Office Supervisor lied and said that there had been “no nudity.”¹³⁴² There was no investigation or action taken in response to this email correspondence.

Over the course of years, the Field Office Supervisor also engaged in harassing conduct toward members of other protected groups, including members of the LGBTQIA+ community and individuals with disabilities. Several employees reported that this Field Office Supervisor made homophobic comments,¹³⁴³ and one said that he referred to gay men routinely in derogatory ways, such as calling them “butt buddies”¹³⁴⁴ or “little girls.”¹³⁴⁵ When certain men that the Field Office Supervisor believed were gay would argue, he would make comments such as “my little girls are fighting.”¹³⁴⁶ Employees reported that it was very clear that this Field Office Supervisor was “homophobic” and had combative relationships with men who were gay.¹³⁴⁷ The Field Office Supervisor’s homophobia was so well-known that one gay man in the field office hid this fact because he thought, “I better not be gay in this office or I’ll have the same dynamic [another gay employee] and the Field Office Supervisor have.”¹³⁴⁸ And, with knowledge of many in the field office, the Field Office Supervisor referred to an employee with a missing limb as “Pirate” or “Pirate McNasty” and permitted others to mock the fact that this employee used a wheelchair.¹³⁴⁹ [REDACTED]

[REDACTED]
[REDACTED]¹³⁵⁰

In 2013, concerns about the “MRS comment” and some of the other conduct, but not all, discussed above, were reported in writing to the Field Office Supervisor’s manager,¹³⁵¹ [REDACTED]

[REDACTED]¹³⁵² The Field Office Supervisor’s manager put that complaint and other complaints in writing in an email to an executive, and another executive told her that he was upset that she had put the allegations in writing because that did not “give management enough flexibility to deal with” the situation.¹³⁵³ The manager understood this statement to mean that putting the allegations in writing did not give management the opportunity to look away, and she had put the complaints in writing specifically to ensure that this did not happen.¹³⁵⁴ [REDACTED]

[REDACTED]
[REDACTED]¹³⁵⁵ We received at least

¹³⁴² Witness 451; Email re: Strip Clubs (May 23, 2013).

¹³⁴³ Witness 359; Witness 653; Witness 451.

¹³⁴⁴ Witness 451; Email re: Hostile Work Environment (July 29, 2013).

¹³⁴⁵ Witness 451.

¹³⁴⁶ Witness 451.

¹³⁴⁷ Witness 451; Witness 359.

¹³⁴⁸ Witness 359.

¹³⁴⁹ Witness 517; Witness 451; Witness 637.

¹³⁵⁰ Witness 451.

¹³⁵¹ Witness 653; Email re: Sexual Discrimination (July 28, 2013).

¹³⁵² [REDACTED]

¹³⁵³ Witness 653.

¹³⁵⁴ Witness 653.

¹³⁵⁵ [REDACTED]

one report through our hotline claiming that this then-former Field Office Supervisor continued to ask employees if they wanted to join him at strip clubs in his new region.¹³⁵⁶ The Field Office Supervisor is no longer with the FDIC and we understand he left on his own accord.

Example 5

An individual reported, through the hotline, the behavior he experienced in a region.

In 2010, he wrote a letter addressed to an executive stating his concern that the FDIC's "reputation is at risk."¹³⁵⁷ The letter described incidents in 2010 when PRIDE month was described as "National Pervert Month" and an "LGBT Month" poster was placed in his cubicle. The letter also discussed a 2010 email "document[ing] Muslims as terrorists and stat[ing] that there are still many Muslims left because the United States hasn't played 'Cowboys and Muslims.'" The letter described emails from 2009 denigrating people from Kentucky, Hispanics, and African-Americans. The letter also discussed comments about a female examiner, including a suggestion about her exchanging sexual favors with a noncommissioned examiner and a description that she was "like a grizzly bear with tits."¹³⁵⁸

In addition, the letter detailed prior incidents that had been reported to the Field Office Supervisor, including comments about a supervisory examiner and his deceased wife, and social media posts that an examiner had made about "pissed off'd Puerto Ricans" who were "pissed about getting their banks shut down." In closing, the individual observed, "I do not know if this kind of behavior is representative of the broader FDIC, but it leaves me questioning why I would continue to work in an office that behaves unprofessionally and for a Corporation that condones such behavior." The letter suggested that if management deemed that the issues could not be resolved or did not agree with them, they strongly consider letting him relocate to a field office that values employee diversity and professionalism.¹³⁵⁹

The individual told us that he had sent the letter to the executive because it seemed like his choices were to leave the FDIC or to stand up and say something. One reason he had addressed the letter to that particular executive was that he felt that if anyone would take some sort of action, it would be that executive. After he sent his letter, several people (to whom he had not sent the letter) contacted him to assure him that his concerns would be addressed, which made him feel like everyone knew his business, but no one spoke to him about the substance of the letter.¹³⁶⁰

He explained to us that he was relocated to another office temporarily and later reassigned to another office. He does not think that management took action, other than relocating him. He told us that the examiners whose conduct his letter described stayed in the office, and some of them were even promoted shortly afterward, which felt crazy to him. He

¹³⁵⁶ Witness 499.

¹³⁵⁷ Witness 331.

¹³⁵⁸ Witness 331.

¹³⁵⁹ Witness 331.

¹³⁶⁰ Witness 331.

explained that in a way, they were being rewarded or promoted for their behavior, which felt like a slap to the face.¹³⁶¹

He said he felt that there had been backlash for reporting the misconduct. He later heard from others that the story that was being told was that he had been unhappy in the field office, he was unhappy living in the area, he just wanted to get out of there, and he made a bigger issue out of the situation than what was really happening. In 2017, an executive mentioned to him that she was “surprised” by how far he had progressed at the FDIC given the earlier situation. He shared with us that this comment still bothers him because employees should be able to report without fear that it will negatively impact their career, but the comment confirmed what he had known to be true about the FDIC. He explained that he spent some time working for the FDIC [REDACTED] he received no offers, even though he was applying for positions below his corporate grade.¹³⁶²

III. Allegations of Other Forms of Harassment

Example 1

An employee told us about bullying and harassment by a former supervisor in headquarters.¹³⁶³

Her supervisor regularly shamed, yelled, bullied, and intimidated the team during meetings. She was the most junior and least paid member of the team, but she was doing the most work. Almost immediately after she began in her position, her supervisor began to give her more work, including his own work, to complete. At some point after, she pointed out a mistake that he had made, and he started having her complete his work and review other team members’ work. She is not sure if this was a workaround to avoid other mistakes or was retaliation for pointing out his mistake. He instructed her not to tell anyone. The supervisor hired a friend, who did not do her job and made many mistakes that the employee had to correct. Another supervisor told the employee that the new hire would be held accountable once the new hire was promoted. The employee shared that she did not think it made sense to promote someone who was unable to do the work of a lower grade employee, and then try to correct the issue after promotion.

The employee feared for her physical safety because of her supervisor’s conduct. She once sent an email to the supervisor’s first-line supervisor about a mistake her supervisor made. The supervisor called to yell at her and threatened her not to “ever [send] something like that through email again.” He pressured her not to tell other seniors about the issue.

Around 2023, a complaint against the supervisor was made on the employee’s behalf. The employee told us it seemed that the supervisor’s first-line supervisor was upset

¹³⁶¹ Witness 331.

¹³⁶² Witness 331.

¹³⁶³ Witness 358.

with her for raising issues. The employee heard from others that the supervisor's own supervisors had swept under the rug reports that were made against him in the past.

The employee learned that during the investigation, the supervisor was promoted with a salary increase. When the investigation was concluded, the employee heard during a team meeting that the supervisor had requested a transfer to another position that was technically a lower grade level and a non-supervisory position but was allowed to keep the same salary. She panicked whenever she had to attend an in-person meeting, because she was afraid of running into the former supervisor. At some point, she requested that her parking spot be moved so that it was farther away from her former supervisor's parking spot to minimize running into him. The employee does not have faith that anything will change even now that the investigation has concluded. Because of her continued fear of retaliation from her former supervisor, and fear for her physical security, she remains afraid of going into the office in-person. As a result, she believes that she has limited her opportunities for promotion because she is not present in the office to gain necessary exposure. She continues to be afraid of applying for a promotion, despite her qualifications, because of her continued fear of running into her former supervisor. The employee has concluded from her experience that "bullying is accepted in the federal government."¹³⁶⁴

Example 2

Several employees reported allegations that the executive team in their division has marginalized, intimidated, and retaliated against employees.¹³⁶⁵ One of the employees who reported to us has been at the FDIC for [REDACTED]¹³⁶⁶ He shared with us that the FDIC is a great place to work and the people are great to work with, but he is concerned that the FDIC has lost its moral compass because of discrimination, bias, marginalization, and failure to treat people with professional courtesy, fairness, and respect. He said he is experiencing bias, discrimination, and isolation, it is not a good place to be, and in his [REDACTED] career, this is the first time he has had to deal with a situation like this.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹³⁶⁷

[REDACTED]
[REDACTED]
[REDACTED]

¹³⁶⁴ Witness 358.

¹³⁶⁵ Witness 576; Witness 372; Witness 290; Witness 260; Witness 252.

¹³⁶⁶ Witness 576.

¹³⁶⁷ Witness 576.

[REDACTED] 1368

Another employee who reported to us said she joined the FDIC in the [REDACTED]

[REDACTED] 1369 [REDACTED]
[REDACTED]
[REDACTED] 1370 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 1371 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 372 [REDACTED]

[REDACTED]
[REDACTED] 1373 [REDACTED]

1368 Witness 576.
1369 Witness 372.
1370 Witness 372.
1371 Witness 372.
1372 Witness 372.
1373 Witness 372.

They described the retaliation as including not being awarded a bonus, not being selected for a position, or not being able to transfer to another group.¹³⁸²

Employees described the culture of the division as fear-driven.¹³⁸³ One employee reported anonymously that colleagues have mentioned that, in the current culture, they are afraid to act.¹³⁸⁴ They said there is a fear of retaliation for doing what you think is right, for fear that, you may be the next person assigned in a [REDACTED] role, excluded from a meeting, or reassigned. That employee explained that colleagues have said they are hesitant to react quickly, although the job requires employees to react quickly. They said the division has a very unique mission and unique expectation of staff. They compared the staff to firefighters who, when the alarm sounds, have to run to it, and stay until the fire is out. They explained that for this reason, the staff needs to have and exercise authority to make important decisions.¹³⁸⁵

An employee told us anonymously that they have no confidence in the internal reporting process.¹³⁸⁶ They explained that there is no anonymity. They said they know the details of reports that have been made about other situations, so they do not expect that any internal reports they make will be handled confidentially. They said they are afraid that the executive team will punish them. They explained that because of the nature of the work, problems will come up, and the executive team will weaponize those problems to get rid of the employees they decide they do not like and do not want around anymore. They said there is only a downside and no upside to making a report.¹³⁸⁷

Example 3

We heard from an employee about bullying by a former supervisor in a region.¹³⁸⁸ This was corroborated by another caller.¹³⁸⁹ The employee told us that during a meeting in 2023, the former supervisor started heckling an employee who was giving a presentation. The presenter tried to end the heckling, but the former supervisor continued laughing at and mocking the presenter. Finally, the former supervisor's first-line supervisor was able to make the former supervisor stop. That employee told us he wanted to complain, but he thought, the supervisor "did this in front of his boss; who do you call?" The employee also wondered, "what's the point" of making a complaint? It would take hours to prepare and end up "just go[ing] in a big black hole." He said he felt demoralized. He was concerned that he would work on a project and at the end, the former supervisor would heckle him, laugh at him, and make him feel stupid and useless. The former supervisor had shown everyone how he behaved if he did not agree with a team member or did not like the team member's work.

¹³⁸² Witness 252.

¹³⁸³ Witness 531; Witness 260; Witness 271.

¹³⁸⁴ Witness 260.

¹³⁸⁵ Witness 260.

¹³⁸⁶ Witness 260.

¹³⁸⁷ Witness 260.

¹³⁸⁸ Witness 409.

¹³⁸⁹ Witness 561.

The employee explained that the former supervisor’s conduct had gotten in the way of the team getting work done.

He observed that if the former supervisor “[could] find something that he [could] beat you up over, he [would] do it.” At one point in early 2023, the former supervisor became enraged after the team missed an issue. The former supervisor was yelling at the team and badgering and harassing them. He would not let the issue go.

He told us the former supervisor could upend any process the former supervisor wanted. He said the former supervisor confronted team members about what they said about the former supervisor in surveys. Apparently, when a team member was leaving, the former supervisor insisted on sitting in on the exit interview. He said the former supervisor could not follow the rules and everything needed to happen according to the former supervisor’s standards. He described the former supervisor saying things all the time that were not based in reality or the truth.

The employee described the former supervisor’s first-line supervisor signaling that the team should stay away from the first-line supervisor—that the first-line supervisor could not fix the team’s problems. He said the first-line supervisor never reached out to team members.

Recently, the former supervisor was reassigned to a position that is seen as a promotion.¹³⁹⁰

Example 4

Around 2019, an executive left a highly inappropriate voicemail for an employee reporting up to that executive who had made a mistake.¹³⁹¹ Another executive who listened to the voicemail said it was filled with vitriol, with the executive screaming and cursing saying things like “I don’t f***ing care what happened and I don’t give a f*** that....” That executive who listened to the voicemail described it as “shocking” and “completely inappropriate ... for a fairly benign mistake.”¹³⁹² The matter was resolved through a settlement that included the FDIC’s agreement to make a payment to the employee,¹³⁹³ [REDACTED],¹³⁹⁴ and to provide executive coaching to the executive.¹³⁹⁵

¹³⁹⁰ Witness 409.

¹³⁹¹ Witness 296; Witness 612.

¹³⁹² Witness 561.

¹³⁹³ Witness 561.

¹³⁹⁴ *Settlement Agreement* (Feb. 18, 2020).

¹³⁹⁵ Witness 652.

Example 5

Two employees reported through the hotline that around 2019, during a meeting, a manager in a region threatened to fight a colleague.¹³⁹⁶ There were witnesses including an executive, but no one took disciplinary action against the manager.¹³⁹⁷ Instead, the colleague who was threatened was forced to apologize, while the manager was not.¹³⁹⁸

One of the employees explained that this was odd because the manager was the one who had provoked and threatened the colleague.¹³⁹⁹ That employee also said he had seen many incidents like that over the course of his career, and this was an example of the FDIC's "good ol' boys network." That employee explained to us that the manager was a friend of the executive, so that is why there were no repercussions for the manager's actions. The employee said this is how the network or cliques function at the FDIC. The employee said he reported the incident to human resources, who responded that no one in management had raised the issue.¹⁴⁰⁰

Example 6

Three individuals called the hotline to describe harassing and bullying behavior by management, including a now retired Field Office Supervisor.¹⁴⁰¹ [REDACTED]

[REDACTED] She told us that after she became a parent around [REDACTED], her manager started taking opportunities away from her, saying "You have too much on your plate now that you have [a child], so I am removing all your instructing positions." Those opportunities included giving presentations, speeches, and trainings. When she protested, her manager told her that because those tasks were not technically part of her job, they could be removed. She told us she felt that her manager was trying to "tear her down."¹⁴⁰²

She reported to us that her manager held her requests for sick leave for herself or her child against her. Around [REDACTED], her manager told her that her doctor's appointments were interfering with her work and schedule and that she should be a better teammate, like the manager. The manager claimed that the manager needed surgery, but was putting it off for a few months to help with examinations. Once, after she took a couple hours off of work and moved a meeting, her manager told her she was unprofessional and an embarrassment to the FDIC. She later went to the emergency room, where she was diagnosed with an infection and told to rest, but she did not rest due to fear of her manager. A few weeks later, she contracted a serious illness and was out of the office for a week. While she was out, her manager told her that she was showing a lack of teamwork and letting her teammates down; lack of judgment and time management because if she had been ahead of schedule, the sick leave would not

¹³⁹⁶ Witness 297; Witness 646.

¹³⁹⁷ Witness 297.

¹³⁹⁸ Witness 646; Witness 297.

¹³⁹⁹ Witness 646.

¹⁴⁰⁰ Witness 646.

¹⁴⁰¹ Witness 678; Witness 607; Witness 134.

¹⁴⁰² Witness 678.

have interfered with the completion of her work; and lack of accountability because she was not accepting her part in delaying an examination due to her illness. She shared that, in contrast, schedules for other colleagues were adjusted to accommodate their individual or family situations.¹⁴⁰³

She told us she “work[ed] in fear of being constantly watched” because her manager would call colleagues on examinations with her to ask how many times she was getting up, inquire about what she was working on, and find out how she was doing. Around [REDACTED], during a period when she took two hours of personal time each evening to teach a [REDACTED] class, her manager told her she needed to choose between her [REDACTED] and her job. She said everyone in the office knew of how she was being treated and she had seen others leave the manager’s office in tears, but they did not speak up due to a fear of retaliation.¹⁴⁰⁴

A second individual told us that management would monitor when the first individual swiped in and swiped out from the office. The second individual also confirmed that after the first individual became a parent, her capability to serve as an instructor was questioned. That individual said management would bring up the first individual’s [REDACTED] and her parental status. The individual also shared that employees were reluctant to file complaints against the Field Office Supervisor because the Field Office Supervisor was a high performer. The individual explained that there were also concerns that there is no confidentiality at the FDIC and that if management finds out about a complaint, they will all cover for each other. The individual told us that the office loses one employee each quarter, which that individual assumes is due to the culture, but management “will always have an explanation as to why they left.” As that individual observed, “The people that are the problem do not think that they are the problem. Management keeps circulating surveys looking for an answer different from what they’ve been hearing.”¹⁴⁰⁵

The first individual explained that over the course of three years, her performance rating went from a five rating to a one rating. She said this confused her because other colleagues and bankers made glowing remarks about her. She received negative ratings for work that she had done with other colleagues, while they received positive ratings for the same work. Even as her performance ratings declined, she continued to run bank examinations and train colleagues. Her manager routinely yelled at her and told her she was “incompetent” and a “waste of time.” Her manager would cite her work product to colleagues as an example of “what not to do.” After she told her manager “feel better” as her manager was ending a call with a bank, her performance review included a comment that she showed poor judgment, poor communication, lack of teamwork, and no accountability because she had shared medical information about the manager with a bank. Another time, after she coughed a lot at a meeting with a bank, she reassured the meeting participants that she had “some throat damage that gets irritated at times,” but she “[was] not contagious.” Her performance review included a comment about this incident as well.¹⁴⁰⁶

¹⁴⁰³ Witness 678.

¹⁴⁰⁴ Witness 678.

¹⁴⁰⁵ Witness 607.

¹⁴⁰⁶ Witness 678.

She said her manager and Field Office Supervisor accused her of mistreating them. She once asked for time off by sending her manager a message, to which the manager responded that she would “think about it.” After she went ahead and submitted a formal request for time off, in accordance with office protocol, the manager said her submission of the formal request before the manager was able to think about it was “bullying.” The manager and the Field Office Supervisor then called her in for a meeting, during which the Field Office Supervisor lectured her. She told us this incident confirmed that, in interactions with the manager, employees would have no support from the Field Office Supervisor. Another time, the Field Office Supervisor told her that requesting leave and telework after workhours or on the weekend was “rude, unprofessional, and untimely,” as well as “inconsiderate” of the Field Office Supervisor.¹⁴⁰⁷

She shared with us that on one occasion when her manager had brought her to tears, she caught her manager smiling. It got to the point that when the manager’s name would appear on the individual’s phone, her “whole world would crumble” because she knew the call “wouldn’t be anything good.” She was “stressed to the point” that her hair was falling out and she had to see a therapist. The bullying had a lasting impact on her. When she goes to see her boss at her current job, she gets “the same feeling of dread” due to what her manager and the Field Office Supervisor put her through.¹⁴⁰⁸

She told us that she went to the union about her situation, but they were not able to help. The union representative she was asked to work with was too nervous to challenge the manager’s actions because of the manager’s close relationship with the Field Office Supervisor, who had close connections in headquarters. She said she was told there was nothing the union could do because she was not a member of a protected class. Her employment was terminated around [REDACTED] with very little warning. An executive called her to tell her how great of an employee she was and that any bank would value her years of experience. She responded, “If I’m so great, why did you let them fire me?”¹⁴⁰⁹

We heard about another individual who was bullied and harassed by management in that office. The first individual had told us she would often see another individual leave the manager’s and Field Office Supervisor’s offices in tears. That individual called the hotline herself to describe her experiences. She joined the FDIC out of college. She shared that as soon as she joined the office, she was warned by other employees not to get on management’s bad side. She told us that management played “insidious mind games” on certain employees, including herself. Management would record every time she entered or left the building. Management asked her not to speak about diversity or racial discrimination in the workplace. They opposed her applying to join the Chairman’s Diversity Advisory Council.¹⁴¹⁰

She said she raised her experience internally, though she could not remember to whom. She was told that her experience was unfortunate and there are a lot of bad managers at the FDIC. She shared with us, and another individual confirmed, that one of the managers in

¹⁴⁰⁷ Witness 678.

¹⁴⁰⁸ Witness 678.

¹⁴⁰⁹ Witness 678.

¹⁴¹⁰ Witness 130.

the office was promoted to another position.¹⁴¹¹ She explained that bullies are more likely to be promoted and work their way up the ladder at the FDIC, but the workplace culture has made it increasingly more difficult for the FDIC to retain employees. She added that the toxic workplace culture is particularly bad for young people because for most of them, the FDIC was their first job, which led many to think that was normal workplace behavior, and that in turn created a cycle of bullying and inappropriate behavior. She said the toxic workplace culture was perpetuated throughout the FDIC and thrived due to the lack of action against it. She told us that she left the FDIC due to the toxic workplace culture, but she had not truly understood just how toxic her workplace was until she left for another job.¹⁴¹²

Example 7

Three individuals called the hotline to describe harassing and bullying behavior by an examiner based in a region.¹⁴¹³ One of the individuals said that from the time she started at the FDIC until she left twenty years later, the examiner made her the “butt of everyone’s jokes.”¹⁴¹⁴ Once, during a bank exam, the examiner walked into a room with the individual and her team members and asked them, “Do you want to work with this complete idiot or do you want to go to lunch?” She was the person he was referring to as a “complete idiot.” On another occasion, the examiner said, in a room full of people, “[individual,] you’re the stupidest examiner in our entire office.” When the examiner was dealing with a personal situation, he would badmouth his spouse and once threw his phone across a boardroom table in anger. [REDACTED]

[REDACTED]¹⁴¹⁵

The individual told us that she was fed up after the “stupidest examiner” incident. She said she documented the issues with the examiner and went to the Field Office Supervisor. This was the only time she raised a complaint to the Field Office Supervisor. She told him she was done with the situation and management would have to deal with it or they would have to look for someone to replace her. The examiner was temporarily reassigned to another office. After he returned, he was careful with her. She said he asked another colleague if the colleague was a border baby.¹⁴¹⁶ A second individual reported to us that the examiner asked a noncommissioned examiner during an examination, “you’re Hispanic, were your parents born in this country?” After the noncommissioned examiner asked about the reason for the question, the examiner responded, “you look like one of those anchor babies.”¹⁴¹⁷ The second individual said this exchange was reported to the Field Office Supervisor and other supervisors, who responded, “you’re out on an exam, learn to get along.”¹⁴¹⁸

¹⁴¹¹ Witness 130; Witness 312.

¹⁴¹² Witness 130.

¹⁴¹³ Witness 230; Witness 654; Witness 687.

¹⁴¹⁴ Witness 230.

¹⁴¹⁵ *LEERS Timeline* (June 8, 2007).

¹⁴¹⁶ Witness 230.

¹⁴¹⁷ Witness 438.

¹⁴¹⁸ Witness 438.

Another individual reported an experience with the same examiner.¹⁴¹⁹ Around 2010, the individual was participating in a training program at the Seidman Center, where the examiner was serving as one of the instructors. The examiner would pay more attention to the individual, giving her uncomfortable stares. He told her she was doing well and had potential to go far in the FDIC. He added, “especially being in [individual’s region]” and “especially being a minority.” His tone switched from one of admiration to disgust. The implication was that the individual “might beat him out not because of [her] aptitude but because [she is] a minority.” She shared with us that she cannot deny that every time she gets a promotion, although she knows how much work she has put in, this comment looms in the back of her mind. She said she did not report him and is unsure why.¹⁴²⁰

The first individual shared that there was a reluctance to report misconduct due to fear and a concern that such reports “fell on deaf ears.” One reason employees were afraid to speak up or report misconduct was that the FDIC appeared to promote only from within, which meant that employees’ relationships with others were critical. It was very difficult to raise concerns about managers when you knew they were the ones who made promotion decisions. Employees only received a bonus if their direct supervisor recommended them for one. This individual shared that during her twenty years at the FDIC, she almost never got a bonus, which she believed was because her supervisor saw her as a “squeaky wheel.”¹⁴²¹ She explained that for noncommissioned examiners in particular, senior examiners had final say over whether they stayed at the FDIC, because senior examiners completed their developmental feedback forms and could block their advancement to commissioned examiners. She added that aside from the fear, there was a reluctance to report misconduct because of a lack of confidence that reports would go anywhere.¹⁴²²

IV. Allegations of Race-Based Discrimination

Example 1

An individual reported through the hotline about discriminatory treatment in a region. He told us he joined the FDIC as a noncommissioned examiner in [REDACTED] and his employment ended in [REDACTED] [REDACTED].¹⁴²³ He is Black. He shared that when he started, he observed that supervisors were unwilling to provide assistance. About a month later, after White noncommissioned examiners started at the office, certain supervisors “extended a warm welcome” to them, “offering step-by-step instructions and expertise.” White noncommissioned examiners received “hands-on training and timely responses to their queries.” In contrast, when he asked questions early on, he was told to “read the manual.” When he asked for help, his supervisor consistently said the supervisor was busy.¹⁴²⁴

¹⁴¹⁹ Witness 687.

¹⁴²⁰ Witness 687.

¹⁴²¹ Witness 430.

¹⁴²² Witness 430.

¹⁴²³ Witness 232.

¹⁴²⁴ Witness 232.

He was told later during a feedback meeting that he did not ask enough specific questions. When he asked about the appropriate way to seek assistance, he was “advised to persistently approach others until [he] obtained sufficient information.” At another feedback meeting, when he showed a supervisor the FDIC’s expectations for supervisors, coaches, and noncommissioned examiners, the supervisor responded that the supervisor was unfamiliar with the document and would review it later. The supervisor told him that he needed to complete his work in any event “because that’s what [he] was being paid for.”¹⁴²⁵

Shortly before he was due to attend a training in headquarters, the Field Office Supervisor told him he could not go because he had not passed a test. He later learned that other colleagues who also had not passed the test had been able to attend the training.¹⁴²⁶

Around October, he was asked to attend a meeting with the Field Office Supervisor. He was told at the meeting that his performance was poor and he never asked for assistance. Out of the blue, he was told his employment would be terminated the following day. He was given until 5pm on the day of the meeting to resign in lieu of termination. He resigned. He has filed an EEO complaint.¹⁴²⁷

Another individual reported through the hotline about experiences of Black employees in the office. She told us that when the first individual asked for assistance, he would not receive it. She said the supervisors in charge of training him were not training him properly, but then they would rate him poorly in his feedback forms. She explained that he did not deserve most of the criticism he received, and it was excessive. She identified another Black employee who had been experiencing similar treatment, including getting feedback that was not helpful and receiving excessive criticism, until the public reporting in November 2023.¹⁴²⁸

We reviewed an anonymous letter sent in late 2023 to the Field Office Supervisor and recipients including the FDIC Chairman’s Office and the regional director. The letter referred to workplace culture issues at the office and stated that the Field Office Supervisor had dismissed five Black employees. The Field Office Supervisor has been reported to have been moved to a position in [REDACTED].¹⁴²⁹

Example 2

Two employees told us about discriminatory treatment of two Asian women by a former supervisor in headquarters.¹⁴³⁰ The first employee shared that a few years ago, a new supervisor joined her unit. At the end of the year, the supervisor told her he was not sure he could give her a “Satisfactory” performance rating because her work product was unprofessional. He claimed that he had spoken to her colleagues, who agreed with that

¹⁴²⁵ Witness 232.

¹⁴²⁶ Witness 232.

¹⁴²⁷ Witness 232.

¹⁴²⁸ Witness 432.

¹⁴²⁹ Witness 432; Witness 236; Witness 324.

¹⁴³⁰ Witness 690; Witness 380.

conclusion. Initially, she was very embarrassed. She took his comments seriously and she reread her work product and considered how she could have made it better. She went to her colleagues and asked how she could improve. They responded that the supervisor had spoken to them and they had told him the work product was not perfect, but it was fine.¹⁴³¹

The second employee shared with us that the first employee was “very experienced” and a “great resource for the team.”¹⁴³² Nevertheless, the supervisor had the first employee shadow a junior male colleague. On another occasion, the supervisor chastised the first employee for conduct that the supervisor characterized as unprofessional. The response was unwarranted and it “seemed like [the supervisor] was beating up on her for no particular reason.”¹⁴³³

The first employee told us she later heard that the supervisor was criticizing the work of another colleague.¹⁴³⁴ That colleague was a superstar and produced stellar work. Like her, the colleague is a woman and Asian. The first employee wondered if their identity had anything to do with how they were being treated. The second employee described this other colleague as “talented” in her field and “one of the best in the agency.” The supervisor, however, “always had something negative to say about her work.” The supervisor frequently critiqued the colleague’s work, citing quality or tone, but he had no concrete suggestions.¹⁴³⁵

The first employee explained to us that she learned to manage the situation. This included learning not to make suggestions. She ended up getting a “Satisfactory” performance rating. She did not consider going to the supervisor’s manager, because the supervisor’s manager had a reputation for siding with managers and it “would have been a circle the wagons situation.” She added that it would have gone against the culture, in which everything has to be channeled through the chain of command and supervisors need to know the content of any conversation up the chain beforehand and after the conversation happens. She explained that supervisors need to be in control and the internal code is “don’t embarrass your supervisor in front of their supervisor.”¹⁴³⁶

Example 3

An employee reported anonymously through the hotline about their experiences as a member of an underrepresented group. They started at the FDIC a few years ago. After they started, they were told that they were only hired because of the lack of members of underrepresented groups in the area. Several colleagues openly commented that those colleagues did not like working with members of underrepresented groups. One colleague never spoke to them and left them off of a list of employees who had contributed to a project.

¹⁴³¹ Witness 690.

¹⁴³² Witness 380.

¹⁴³³ Witness 380.

¹⁴³⁴ Witness 690.

¹⁴³⁵ Witness 380.

¹⁴³⁶ Witness 690.

They told us they only got the “grunt work.” They were constantly left out of the conversation, excluded from meetings, and were not treated as a member of the team. They continuously heard about colleagues being put on projects and being advocated for, but they did not have similar opportunities.

They explained that they have no idea where they are supposed to go with complaints. As they observed, “if you report, no one talks to you, no one wants to work with you. They’ll tell you later you got written up for unsatisfactory work. People get promoted here for wrongdoing. . . . Who would want to open up their mouth after seeing what happens to people who report?” They told us they want there to be more accountability by supervisors and for supervisors to be treated exactly the same as lower-level employees.¹⁴³⁷

Example 4

Another employee called anonymously to tell us about racial discrimination they have experienced in a region as a member of an underrepresented group. They said within a few months of starting at the FDIC, they asked to transfer to another office because of racial bias. In the first office, they observed that noncommissioned examiners from underrepresented groups were slowed down or not provided the same opportunities as White noncommissioned examiners. They also saw that members of underrepresented groups rarely received performance awards. There was a review of the office for its inability to retain members of underrepresented groups, but nothing came of the review.

They shared that they have continued to experience discriminatory treatment since transferring to the other office. Early on, they were treated differently than a White noncommissioned examiner. They were told they would need to achieve a certain score on a test or face dismissal, whereas a White noncommissioned examiner was commissioned despite failing to achieve that score. More recently, they have been passed over for promotion by colleagues who are less qualified and have less experience, which has discouraged them from applying to certain positions.

They reported that they fear retaliation. They do not want to be put on the “Bad List,” which would limit their career advancement opportunities. They have heard stories of employees being punished for speaking up, including receiving less desirable assignments or being forced to relocate to undesirable locations.¹⁴³⁸

Example 5

An employee reported anonymously about their experiences as a Hispanic employee in a region.¹⁴³⁹ They told us about discriminatory comments made to them earlier in their career. Soon after they started at the FDIC, when they were eating in the lunchroom, a colleague came in and said, “What’s the FDIC doing hiring people who can’t speak English?” On another occasion, during an examination, a colleague was railing about immigrants entering

¹⁴³⁷ Witness 219.

¹⁴³⁸ Witness 334.

¹⁴³⁹ Witness 226.

the country and joining government agencies. The colleague then asked them to recite the Pledge of Allegiance to prove that they were American. They explained to us that they did not consider reporting these incidents because they were noncommissioned at the time. As noncommissioned examiners, they were more closely scrutinized, considered dispensable, and more vulnerable to layoffs for pretextual reasons.

They told us that later in their career, after a banker told them, “Mexicans are made to work in the fields,” they complained to the examiner-in-charge, who apparently had a talk with the banker. Recently, they and other colleagues raised concerns about the unfavorable portrayal of a Hispanic man in a training video, and that was eventually taken out of the training.

They explained to us that they are in a great position now, and their experience at the FDIC has been positive overall. They were spurred to contact our hotline after senior examiners made comments during a recent town hall such as “the FDIC is lowering their standards hiring minorities.” They observed that the FDIC has a hiring gap for Hispanics and they are concerned that the attitude of senior examiners who made those types of comments is contributing to that situation.¹⁴⁴⁰

Example 6

A Black employee reported through the hotline about experiences with discrimination over the course of her career at the FDIC.¹⁴⁴¹ Around 2008, before taking the exam to become a commissioned bank examiner, she was told that no Black employee had passed the exam on the first try, and the only way Black employees became commissioned examiners was through completing individual development plans. She later found out that was not true.

She told us that although she had significant lending experience before coming to the FDIC, her input was not valued, unlike that of her less experienced White colleague. She was continuously passed over for promotion despite having stronger credentials than other candidates. She performed significantly better than a White colleague on the examiner test, but he was promoted much earlier than she was.

She shared with us that at one point, she attended a series of trainings that concluded with a test. There were a few other Black new hires in her class. She heard her White colleagues refer to the class as the “Affirmative Action class.” At the end of the trainings, she and a White colleague tied for the highest score on the final exam, which normally merited a prize. The instructor awarded the prize to the White colleague, however, on the basis that the White colleague was “more engaged” over the course of the trainings. She was livid and later complained to her supervisor, whose reaction was basically, “whatever, get over it.” These situations happened over and over again during her tenure at the FDIC, to the point that she became desensitized to them over time.

¹⁴⁴⁰ Witness 226.

¹⁴⁴¹ Witness 497.

She explained that later in her career, she routinely applied for promotions and was passed over in favor of White colleagues. Two of the managers involved in those interviews told her that they already had someone in mind for the position before the hiring process started. Her experience is that there is no transparency about personnel decisions, and there is a lot of “lawlessness” that goes on at the FDIC.¹⁴⁴²

Example 7

A Hispanic employee told us about his experiences in a region.¹⁴⁴³ When he joined the FDIC, he was told, together with the other Hispanic employees who started with him, that they were “token” hires or there “for a quota.” They had to work twice as hard to prove themselves. Preferential treatment was given to a White female colleague, who was assisted on exams by management, while the members of underrepresented groups only had each other. He learned at one point that the office had bets on how long the members of the underrepresented groups would last.

He described enduring racist remarks from his first week in the office. For example, during an office meeting, someone said not to speak Spanish in the office, because “you never know what [employee] is saying about [his colleagues].” He responded that no one should whisper in the office, because he never knew what others were saying about him. During training, a colleague often used members of underrepresented groups to discuss examples of fraud or misconduct at a bank. An illustrative example was: “[a] Hispanic teller is the insider in the bank and assisting her Hispanic friends to get information about the bank.” After he reported this incident, the colleague apologized, but added “You know guys it could happen again.” Management and human resources made excuses for the colleague, saying “[colleague] is from [another region], he grew up in a different environment.”

He said he repeatedly faced discrimination from bank personnel, and no one on his team stood up for him. A banker once told him, “Hey [employee] my janitor and housecleaner are in the break room watching Telemundo, you should join them.” None of his colleagues stood up for him and instead they teased him about Telemundo during the rest of the examination. Another banker forgot his name and simply referred to him as the “foreign kid.”

He explained that later in his career, he organized diversity initiatives and targeted diversity recruitment. A colleague asked him “when will we have a white man’s day/month?”¹⁴⁴⁴

¹⁴⁴² Witness 497.

¹⁴⁴³ Witness 485.

¹⁴⁴⁴ Witness 485.

V. Allegations of Other Forms of Discrimination

Example 1

Two female parents in a region told us about their treatment by their supervisor.¹⁴⁴⁵ The supervisor treated one employee (who was also in a supervisory position) poorly “for being a working mom.”¹⁴⁴⁶ He complained about the leave time she took. He frequently gave her travel assignments, which she thought was intended to drive her to quit. After she took a different position, the other employee applied for the supervisory position.

The other employee told us that the supervisor talked about how he did not want “another woman with young kids in this position because [he] need[ed] to get some work done.”¹⁴⁴⁷ The other employee did not get the promotion. The supervisor told her that she had not been selected because she would not want the role, since she had children and it involved travel to the field office. The supervisor told her that she would be happy with the person he had selected, which turned out to be a colleague who did not have children. She tried to make a report and ultimately did not pursue the issue because she was afraid of retaliation. She knew the supervisor had the ability to make life difficult for her and she worried that might happen. She had seen him make life difficult for those who “got on his bad side,” including through his control over their travel assignments.¹⁴⁴⁸

Example 2

Individuals told us about the experiences of women, in particular women who have children, in two offices in a region.¹⁴⁴⁹ One individual said that after she became a parent, her manager told her, “you’re a mother now, you don’t belong in the workplace.”¹⁴⁵⁰ Another, who was a single parent, was subjected to comments about how children who grew up with single parents were destined to be delinquents.¹⁴⁵¹

We received similar reports about the other office.¹⁴⁵² One individual shared that she works part-time and her experience is that part-time employees appear to get harder and more work. Most of the part-time employees are women with children. Another individual explained that she has been denied promotional opportunities because she has worked part-time.¹⁴⁵³ She said that arbitrary rules, mostly targeting women working part-time, kept her at the same grade level for decades, blocking financial and career opportunities. Being denied promotional opportunities “for so many years has affected her pay, retirement, and her psyche.” She said other women in the office have been treated similarly, and they have

¹⁴⁴⁵ Witness 436; Witness 244.

¹⁴⁴⁶ Witness 436.

¹⁴⁴⁷ Witness 244.

¹⁴⁴⁸ Witness 244.

¹⁴⁴⁹ Witness 202; Witness 27; Witness 268; Witness 376; Witness 438.

¹⁴⁵⁰ Witness 376.

¹⁴⁵¹ Witness 438.

¹⁴⁵² Witness 27; Witness 504; Witness 522.

¹⁴⁵³ Witness 522.

considered taking action but fear retaliation. She is aware of men who have a higher grade and work part-time, and it is unclear why that accommodation was made for them.¹⁴⁵⁴

One individual told us that the office has a reputation for sexism.¹⁴⁵⁵ Others described it as male-dominated with a pervasive boys' club.¹⁴⁵⁶ The men are not used to having women around or addressing women's needs, and women inadvertently perpetuate the culture by doing what they are told, to avoid rocking the boat.¹⁴⁵⁷ Previous male Field Office Supervisors perpetuated the boys club culture by creating an "in crowd" of men who would all go out together and stick together.¹⁴⁵⁸ One individual shared with us that she told an executive about the cultural problems at the office, but was informed that the executive could not help her unless she filed a complaint.¹⁴⁵⁹

Example 3

An employee reported to us anonymously about their challenges receiving reasonable accommodations in a region. They told us they experienced a serious injury that affected their ability to work. On a few occasions, their manager criticized them for their performance, which had been affected by their disability, and ultimately gave the employee the lowest performance rating. The employee sought help from the union for the performance rating, but hesitated to file a grievance due to fear of retaliation, in part based on an earlier experience. The earlier experience was a grievance they filed over a decade ago. As a result of that grievance, they felt they had a "target on [their] back." They were basically left with the choice of quitting, waiting for the FDIC to try to fire them, or relocating. They ended up relocating. More recently, they came very close to filing an Equal Employment Opportunity complaint, but ultimately did not file. The employee has also chosen not to file grievances related to other reasonable accommodation requests due to a fear of retaliation.¹⁴⁶⁰

¹⁴⁵⁴ Witness 522.

¹⁴⁵⁵ Witness 202.

¹⁴⁵⁶ Witness 504; Witness 518; Witness 438.

¹⁴⁵⁷ Witness 504.

¹⁴⁵⁸ Witness 522.

¹⁴⁵⁹ Witness 27.

¹⁴⁶⁰ Witness 82.

APPENDIX B

APPENDIX B

APPLICABLE LEGAL STANDARDS

I. Background

Under federal law, an employer cannot discriminate against an employee or former employee based on membership in several protected classes, including race, color, sex, religion, national origin, age, and disabilities. Discrimination that takes the form of disparate treatment or harassment is illegal.¹⁴⁶¹ Discrimination can occur both inside and outside of the workplace.¹⁴⁶² Retaliation against someone who claims that they have been discriminated against on the basis of a protected characteristic is also illegal.

II. Disparate Treatment

Disparate treatment on the basis of a protected characteristic is illegal discrimination. Plainly speaking, disparate treatment at work means that a person experienced an adverse action as to some employment benefit under circumstances indicating action was taken because of the person's gender, race color, sex, religion, national origin, age or disability.¹⁴⁶³ Employment benefits is a wide-ranging category that includes leave, profit sharing, educational stipends, life and health insurance benefits, long-term and short-term disability benefits, severance benefits, pension or other retirement benefits, and early retirement incentives for which the person was eligible.¹⁴⁶⁴ Eligibility can mean having the right skill set, having a satisfactory job performance, or otherwise meeting the criteria for the benefit.¹⁴⁶⁵

An employment action is adverse if it is a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.¹⁴⁶⁶ Insubstantial or

¹⁴⁶¹ Title VII of the Civil Rights Act of 1964, Unlawful employment practices, 42 U.S.C. §2000e-2; Age Discrimination in Employment Act, 29 U.S.C. §623; and The Americans With Disabilities Act, 42 U.S.C. §12112–12114.

¹⁴⁶² *Lapka v. Chertoff*, 517 F.3d 974, 983 (7th Cir. 2008); *Crowley v. L.L. Bean, Inc.*, 303 F.3d 387, 409 (1st Cir. 2002); *Ferris v. Delta Air Lines, Inc.*, 277 F.3d 128, 135 (2d Cir. 2001).

¹⁴⁶³ *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 256 (1981). Plaintiffs must meet these general requirements for claims under Title VII and the ADEA. The ADEA provides that the “prohibitions in this chapter shall be limited to individuals who are at least 40 years of age.” Age Discrimination in Employment Act, 29 U.S.C. § 631(a). Therefore, plaintiffs making age discrimination claims under the ADEA must also establish that they are at least 40 years of age in their prima facie discrimination claim. Plaintiffs proceeding under the ADA must show that the employer is subject to the ADA, the plaintiff has a disability within the meaning of the ADA, the plaintiff was otherwise qualified to perform the essential functions of the job with or without reasonable accommodation, and the plaintiff suffered an adverse employment action as a result of the disability. See *Capobianco v. City of New York*, 422 F.3d 47, 56 (2d Cir. 2005).

¹⁴⁶⁴ U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, SECTION 3 EMPLOYEE BENEFITS (2000), <https://www.eeoc.gov/laws/guidance/section-3-employee-benefits>.

¹⁴⁶⁵ See, e.g., *EEOC v. Heartland Sweeteners, LLC*, 566 F.3d 1098, 1105–06 (10th Cir. 2009); *Garcia v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993).

¹⁴⁶⁶ *Hoyle v. Freightliner, LLC*, 650 F.3d 321, 337 (4th Cir. 2011) (quoting *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998)).

trivial harms are generally not actionable as adverse employment actions and thus not all reprimands or disciplinary consequences will rise to the level of an adverse employment action for purposes of a discrimination claim.¹⁴⁶⁷

In most circumstances, direct evidence of discrimination is not available, *e.g.*, there is not written communication saying someone did not receive an employment benefit because of race, color, sex, religion, national origin, age, and disabilities.¹⁴⁶⁸ In assessing whether discrimination has occurred, looking at circumstantial evidence is important.¹⁴⁶⁹ While employers may articulate a legitimate, non-discriminatory reason for alleged unequal treatment, consideration of whether such explanations are pretextual must be made, and it is often useful to look at how other similarly-situated individuals outside of the relevant protected class were treated to determine if the explanation was pretextual and, more generally, if discrimination likely occurred.¹⁴⁷⁰

III. Harassment

The federal law's prohibition on discrimination prohibits harassment in the workplace. Harassment becomes unlawful where (1) enduring the harassing conduct becomes a condition of continued employment, or (2) the harassing conduct becomes so severe or pervasive that it creates a hostile work environment.¹⁴⁷¹

For harassing conduct to be unlawful, it need not be *both* severe and pervasive—for instance, the more severe the harassment, the less pervasive it must be, and vice versa.¹⁴⁷² Offhand comments or isolated incidents are generally not considered unlawful.¹⁴⁷³ Typically, the alleged misconduct must be frequent and occur over a substantial period of time.¹⁴⁷⁴ Other factors that are considered include the degree to which the conduct was physically threatening or humiliating, the degree to which the conduct interfered with an employee's work performance, and the degree to which it caused the employee psychological harm.¹⁴⁷⁵

¹⁴⁶⁷ See, *e.g.*, *Herbert v. Architect of the Capitol*, 766 F. Supp. 2d 59 (D.D.C. 2011); *Halcomb v. Office of the Senate Sergeant-at-Arms of the U.S. Senate*, 563 F. Supp. 2d 228 (D.D.C. 2008).

¹⁴⁶⁸ See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Davis v. N.Y.C. Dep't of Educ.*, 804 F.3d 231, 235 (2d Cir. 2015) (*per curiam*); *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 142 (2000).

¹⁴⁶⁹ *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 213 (4th Cir. 2007).

¹⁴⁷⁰ *McDonnell Douglas Corp.*, 411 U.S. at 804.

¹⁴⁷¹ *Preuss v. Kolmar Labs., Inc.*, 970 F. Supp. 2d 171, 185 (S.D.N.Y. 2013).

¹⁴⁷² See, *e.g.*, *Alamo v. Bliss*, 864 F.3d 541, 550 (7th Cir. 2017); *Flood v. Bank of Am. Corp.*, 780 F.3d 1, 11–12 (1st Cir. 2015); *EEOC v. Prospect Airport Servs., Inc.*, 621 F.3d 991, 999–1000 (9th Cir. 2010).

¹⁴⁷³ See *Holmes v. Utah Dept. of Workforce Serv.*, 483 F.3d 1057, 1066 (10th Cir. 2007); *Jones v. Potter*, 301 F. Supp. 2d 1, 9–10 (D.D.C. 2004); *Manatt v. Bank of America*, 339 F.3d 792 (9th Cir. 2003); *cf. Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 185 (4th Cir. 2001).

¹⁴⁷⁴ See *Brenneman v. Famous Dave's of America, Inc.*, 507 F.3d 1139 (8th Cir. 2007); *Craig v. M & O Agencies, Inc.*, 496 F.3d 1047, 1056 (9th Cir. 2007); *Reedy v. Quebecor Printing Eagle, Inc.*, 333 F.3d 906, 908–909 (8th Cir. 2003).

¹⁴⁷⁵ *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 23 (1993).

For example, gender-based harassment can be unlawful when it involves “[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.”¹⁴⁷⁶ Moreover, gender-based harassment can include non-sexual conduct based on sex, such as sex-based epithets, sexist comments, facially sex-neutral offensive conduct motivated by sex, and any other harassment based on sexual orientation, gender identity, pregnancy, childbirth, or women’s reproductive decisions.¹⁴⁷⁷ Similarly, racial harassment can be unlawful when it involves offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Racial harassment does not need to be explicitly racial in nature to be unlawful, but race must be a reason underlying the harassment.¹⁴⁷⁸

IV. Employer Liability for Harassment

Employer liability for harassment may depend on the status of the harasser. If the harasser is an employee’s supervisor and the harassment culminates in a tangible employment action (e.g., a quid pro quo situation), the employer is liable and has no defense.¹⁴⁷⁹ Likewise, if the harasser is an alter ego or proxy of the employer, the employer is liable and has no defense.¹⁴⁸⁰

If neither of these conditions is present, an employer may avoid liability by showing that (1) they acted to prevent and promptly correct any harassment, and (2) that the complaining employee failed to take advantage of resources provided by the employer or failed to take steps to avoid harm from the harassment.¹⁴⁸¹

V. Retaliation

Federal employment discrimination laws prohibit retaliation against any employee who complains about conduct that the employee reasonably believes violates federal discrimination law, including complaints about discrimination and harassment.¹⁴⁸² Protection against retaliation extends to both current and former employees. Anti-retaliation provisions in

¹⁴⁷⁶ EEOC Guidelines on Discrimination Because of Sex, 29 CFR § 1604.11(a) (1980).

¹⁴⁷⁷ See, e.g., *Waldo v. Consumers Energy Co.*, 726 F.3d 802, 815 (6th Cir. 2013); *EEOC v. Nat’l Educ. Ass’n, Alaska*, 422 F.3d 840, 845 (9th Cir. 2005); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e(k).

¹⁴⁷⁸ *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1082–83 (3d Cir. 1996).

¹⁴⁷⁹ *Vance v. Ball State Univ.*, 570 U.S. 421, 424–431 (2013).

¹⁴⁸⁰ See *Faragher v. City of Boca Raton*, 524 U.S. 775, 789 (1998).

¹⁴⁸¹ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765 (1998).

¹⁴⁸² Retaliation against an employee, former employee, or an applicant for employment for making a protected disclosure or exercising these rights is prohibited by 5 U.S.C. §2302(b)(8) and (9). Additionally, FDIC employees are protected from reprisal for whistleblowing activities under the Depository institution employee protection remedy, 12 U.S.C. §1831j. The Inspector General Act, 5 U.S.C. Appendix 3, §7, prohibits reprisal against any employee for making a complaint or disclosing information to an Inspector General. Title VII, the ADEA, the ADA, and other statutory provisions prohibit government or private employers, employment agencies, and labor organizations from retaliating because an individual engaged in “protected activity.”

federal laws ensure that individuals feel comfortable making complaints about potentially discriminatory behavior without their employers taking adverse actions against them.¹⁴⁸³

To qualify for the protections of the anti-retaliation laws, the employee must have engaged in what is called a “protected activity” under federal law. Such activities include participating in the Equal Employment Opportunity (“EEO”) process or opposing discrimination more broadly.¹⁴⁸⁴ Opposing discrimination includes, among other things, complaining or threatening to complain about alleged discrimination against oneself or others; or providing information in an employer’s internal investigation of an EEO matter.¹⁴⁸⁵ Employees must reasonably believe there has been a violation of the discrimination laws when opposing discrimination to qualify for the protections of the law.

The anti-retaliation laws protect an individual only from retaliation that produced an injury or harm. This broadly includes any conduct that might deter an employee from complaining about discrimination.¹⁴⁸⁶ Examples of conduct that produce obvious injury or harm are denial of promotion, refusal to hire, denial of job benefits, demotion, suspension, and discharge.¹⁴⁸⁷ Examples of conduct that might deter an employee from complaining about discrimination include work-related threats, warnings, reprimands, transfers, negative or lowered evaluations, transfers to less prestigious or desirable work or work locations, and even conduct that takes place outside of the workplace and is not work-related.¹⁴⁸⁸ The law, however, does not protect against petty slights or minor annoyances that routinely occur in the workplace that all employees experience.¹⁴⁸⁹

As long as retaliation was a motivating factor in the employer’s adverse action in response to a protected activity, the anti-retaliation laws will apply. While employers may articulate a legitimate, non-discriminatory reason for alleged retaliation, consideration of whether such explanations are pretextual must be made, including based on implausibilities, inconsistencies, or contradictions in the employer’s proposed reason.¹⁴⁹⁰

VI. Law on Privacy

The Privacy Act of 1974 establishes a code of practices that governs the collection, maintenance, use, and dissemination of information about individuals that is

¹⁴⁸³ U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Enforcement Guidance on Retaliation and Related Issues* (Aug. 25, 2016).

¹⁴⁸⁴ U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Enforcement Guidance on Retaliation and Related Issues* (Aug. 25, 2016).

¹⁴⁸⁵ *Crawford v. Metropolitan Gov’t of Nashville and Davison Cnty.*, 555 U.S. 271, 276 (2009).

¹⁴⁸⁶ *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 67 (2006).

¹⁴⁸⁷ *Roberts v. Roadway Express, Inc.*, 149 F.3d 1098, 1104 (10th Cir. 1998).

¹⁴⁸⁸ *Planadeball v. Wyndham Vacation Resorts, Inc.*, 793 F.3d 169 (1st Cir. 2015); *Walker v. Johnson*, 798 F.3d 1085, 1095 (D.C. Cir. 2015); *O’Neal v. City of Chi.*, 588 F.3d 406, 409–10 (7th Cir. 2009); *Hawkins v. Anheuser-Busch, Inc.*, 517 F.3d 321, 347–48 (6th Cir. 2008); *Kessler v. Westchester Cty. Dep’t of Soc. Servs.*, 461 F.3d 199, 209 (2d Cir. 2006); *Aviles v. Cornell Forge Co.*, 183 F.3d 598, 604 (7th Cir. 1999).

¹⁴⁸⁹ *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006); *Millea v. Metro-N. R.R. Co.*, 658 F.3d 154, 165 (2d Cir. 2011).

¹⁴⁹⁰ *McDonnell Douglas Corp.*, 411 U.S. at 804.

maintained in systems of records by federal agencies. Subject to certain enumerated exceptions, the law prohibits agencies from disclosing records contained in a “system of records,” without consent. The law defines “system of records” as records from which information is retrieved “by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.” Such agency records can include, but are not limited to, records that contain identifying information and concern an individual’s education, financial transactions, medical history, and criminal or employment history.¹⁴⁹¹ The FDIC considers “administrative and personnel action record” and “personnel records” to be “agency records” for purposes of the Privacy Act.¹⁴⁹²

There are a number of exceptions to the general rule that prohibits dissemination of information from agency records. Most notably, the law permits disclosure to those within the agency who have a need to know.¹⁴⁹³ Thus, for example, disclosures necessary to investigate alleged employee misconduct or for making disciplinary determinations are permitted under the “need to know” exception.¹⁴⁹⁴ In addition, disclosures can be made for “a routine use.”¹⁴⁹⁵ Because the Privacy Act prohibits dissemination of information relating to individuals, generalized or statistical information that does not include individualized information can be provided and disseminated without violating the law.

VII. Standard For Adverse Employment Actions

The Merit Systems Protection Board (“MSPB”) in a landmark decision, *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), established twelve factors that agencies must consider in determining whether they will take adverse action against employees accused of misconduct.¹⁴⁹⁶

The Douglas factors are:¹⁴⁹⁷

1. The nature and seriousness of the offense, and its relation to the employee’s duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

¹⁴⁹¹ Privacy Act of 1974, 5 U.S.C. § 552a(a)(4)–(5) and (b).

¹⁴⁹² THE FDIC, *System of Records Notices*, <https://www.fdic.gov/policies/privacy/sorns.html> (last visited Apr. 22, 2024).

¹⁴⁹³ Privacy Act of 1974, 5 U.S.C. § 552a(b)(1).

¹⁴⁹⁴ See, e.g., *Tran v. Treasury*, 351 F. Supp. 3d 130, 135–140 (D.D.C. 2019), *aff’d* 798 F. App’x. 649, 649–650 (D.C. Cir. 2020); *Hanna v. Herman*, 121 F. Supp. 2d 113, 123–24 (D.D.C. 2000).

¹⁴⁹⁵ Privacy Act of 1974, 5 U.S.C. § 552a(b)(3).

¹⁴⁹⁶ U.S. MERIT SYSTEMS PROTECTION BOARD, *Determining the Penalty*, https://www.mspb.gov/studies/adverse_action_report/10_DeterminingthePenalty.htm (last visited Apr. 22, 2024).

¹⁴⁹⁷ *Douglas v. Veterans Admin.*, 5 M.S.P.R. 280, 305 (1981).

3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with any applicable agency table of penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. Potential for the employee's rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

All of the factors will not be relevant in every case, but the relevant factors must be balanced in each case.¹⁴⁹⁸ The most important factor is the nature and seriousness of the offense in relation to the employee's duties, position, and responsibilities.¹⁴⁹⁹ In addition, an employee's past disciplinary record, performance records and years of service, and the potential for an employee's rehabilitation can all be significant mitigating factors.¹⁵⁰⁰

¹⁴⁹⁸ *Douglas*, 5 M.S.P.R. at 306.

¹⁴⁹⁹ *Rackers v. Dep't of Justice*, 79 M.S.P.R. 262, 282 (1998), *aff'd*, 194 F.3d 1336 (Fed. Cir. 1999).

¹⁵⁰⁰ *Jackson and White v. Dep't of the Army*, 99 M.S.P.R. 604 (2005); *Singletary v. Dep't of the Air Force*, 94 M.S.P.R. 553 (2003); *Wentz v. U.S. Postal Service*, 91 M.S.P.R. 176 (2002).

APPENDIX C

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GLOSSARY OF DEFINED TERMS

Action Plan	FDIC’s Action Plan for a Safe, Fair, and Inclusive Work Environment
A3P	Association of African American Professionals
AHP	Anti-Harassment Program
AHPC	Anti-Harassment Program Coordinator
Anti-Harassment Policy	Anti-Harassment Program Policy
CAN DO	Corporate Advocacy Network for Disability Opportunities
CDAC	Executive Chairman’s Diversity Advisory Council
CDACs	Chairman’s Diversity Advisory Councils
CHRIS	Corporate Human Resources Information System
CISR	Division of Complex Institution Supervision and Resolution
Council	Council formed under Chair Sheila Bair in 2008 as part of the Culture Change Strategic Plan
Culture Change Initiative	Culture Change Strategic Plan formed under Chair Sheila Bair
D&I Executive Advisory Council	Diversity and Inclusion Executive Advisory Council
DCP	Division of Depositor and Consumer Protection
DE&I	Diversity, Equality, and Inclusion
DOA	Division of Administration
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
ERG	Employee Resource Group

FDIC Board	FDIC Board of Directors
FEVS or FEV Survey	Federal Employee Viewpoint Survey
HAAPI	Heritage of Asian American Pacific Islanders
HOLA	Hispanic Organization for Leadership and Advancement
LEAS	Legal Division’s Labor, Employment, and Administration Section
LERCT	Labor Employee Relations Case Tracker
LERCT ER	Labor Employee Relations Database
LERIS	Labor and Employee Relations Information System
LEERS	Division of Administration’s Labor and Employee Relations Section
MOU	Memorandum of Understanding
MSPB	Merit Systems Protection Board
NIA Women	Networking Inclusion and Advancement for African-American Women
No FEAR Act	Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002
NTEU	National Treasury Employees Union
OCFI	Office of Complex Financial Institutions
OIG	FDIC Office of Inspector General
OIG 2020 Sexual Harassment Report	FDIC OIG Report on Preventing and Addressing Sexual Harassment dated July 2020
OMWI	Office of Minority and Women Inclusion
OPM	U.S. Office of Personnel Management
OSC	U.S. Office of Special Counsel
POWW	Partnership of Women in the Workplace
RMS	Division of Risk Management Supervision

SEPS	Division of Administration’s Security and Emergency Preparedness Section
SOP	Standard Operating Procedures
Special Review Committee	Special Review Committee of the Board of Directors
TEAM FDIC	Transparency, Empowerment, Accountability, and Mission FDIC
Title VII	Title VII of the Civil Rights Act
WEP	Workplace Excellence Program