Preventing and Addressing Sexual Harassment

July 2020 **EVAL-20-006**

Evaluation Report

Program Audits and Evaluations

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Integrity☆Independence☆Accuracy☆Objectivity☆Accountability

Executive Summary

Preventing and Addressing Sexual Harassment

Sexual harassment in an organization can have profound effects and serious consequences for the harassed individual, fellow colleagues, and the agency as a whole. In some situations, a harassed individual may risk losing her/his job or the chance for a promotion, and it may lead the employee to suffer emotional and physical consequences. It may lead to a hostile work environment, which can reduce productivity and morale at an organization, harm the agency's reputation and credibility, and expose the enterprise to litigation expenses and monetary judgments. Therefore, an effective sexual harassment prevention program can help to protect employees and the agency from such harm and costs.

Sexual harassment can result in two categories of allegations: (i) sexual harassment in violation of Federal law (Title VII of the Civil Rights Act (Title VII)), referred to as "unlawful sexual harassment"; and (ii) misconduct involving sexual harassment that does not rise to the level of violating Federal law, referred to as "sexual harassment misconduct." Sexual harassment conduct escalates to "unlawful" status when the offensive conduct affects a term or condition of employment, is used as a basis for personnel decisions, or interferes with an individual's work performance; and where such behavior would lead a reasonable person to consider it intimidating, hostile, or abusive. The FDIC's Office of Minority and Women Inclusion (OMWI) processes unlawful sexual harassment claims, pursuant to Equal Employment Opportunity Commission (EEOC) rules and regulations. The FDIC's Division of Administration (DOA) oversees allegations of sexual harassment misconduct, pursuant to the FDIC's Anti-Harassment Program.

Our evaluation objective was to determine whether the FDIC had established an adequate sexual harassment prevention program, including policies, procedures, and training to facilitate the reporting of sexual harassment allegations and address reported allegations in a prompt and effective manner.

Results

We found that the FDIC had not established an adequate sexual harassment prevention program and should improve its policies, procedures, and training to facilitate the reporting of sexual harassment allegations and address reported allegations in a prompt and effective manner. Specifically, we found that the FDIC had not developed a sexual harassment prevention program that fully aligned with the five core principles promoted by the EEOC. These principles include: (1) committed and engaged leadership; (2) strong and comprehensive harassment policies; (3) trusted and accessible complaint procedures; (4) regular, interactive training tailored to the audience and the organization;

and (5) consistent and demonstrated accountability. Although these principles are not legal requirements under Federal employment discrimination laws, they may enhance employers' compliance efforts.

FDIC leadership demonstrated commitment to preventing sexual harassment through global FDIC-wide emails and the FDIC's 2018-2019 *Diversity and Inclusion Strategic Plan*, which included an action related to providing training on the prevention of unlawful discrimination, retaliation, and harassment. However, the FDIC had not established a strategy, such as the use of rewards or performance reviews, to acknowledge employees, supervisors, and managers, for creating and maintaining a culture in which harassment is not tolerated and for promptly reporting, investigating, and resolving harassment complaints.

The FDIC also should improve policies, procedures, and training to ensure that:

- Employees and supervisors know how to identify and report sexual harassment, and ensure that reporting does not result in fear of retaliation;
- Supervisors know how to promptly and effectively address sexual harassment misconduct; and
- Discipline is proportionate to the level of misconduct.

FDIC policies did not clearly define sexual harassment, include all avenues of reporting allegations of sexual harassment, or clearly describe the roles and responsibilities for preventing sexual harassment and monitoring allegations of such misconduct. Although the FDIC had developed and implemented adequate procedures to address unlawful sexual harassment complaints through OMWI, we found that it had not developed procedures for addressing sexual harassment misconduct allegations. These procedures include: (1) tracking; (2) investigating; (3) reporting; and (4) resolving misconduct allegations. Further, the FDIC had not developed and implemented adequate procedures for applying disciplinary action in response to substantiated harassment allegations, including sexual harassment allegations. In addition, the FDIC should improve its training for employees and supervisors on how to identify conduct that constitutes "sexual harassment," report allegations of sexual harassment, and address allegations. Finally, the FDIC does 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.

In April 2019, we conducted a survey of FDIC employees that indicated approximately 8 percent of FDIC respondents (191 of 2,376) had experienced sexual harassment at the FDIC during the period January 2015 to April 2019. Similarly, the Merit Systems Protection Board (MSPB) survey of FDIC employees, conducted in 2016 (based on data from 2014 to 2016), indicated that approximately 9 percent of FDIC respondents (40 of 427) had experienced sexual harassment. The Government-wide average in this MSPB survey was 14 percent. Although 191 FDIC respondents to the OIG survey reportedly

experienced sexual harassment, the FDIC only received 12 reported sexual harassment allegations, including both formal EEO complaints and misconduct allegations from January 2015 to April 2019. This suggests there may have been an underreporting of sexual harassment allegations.

We recognize that there are many reasons why employees may not report sexual harassment. Our survey indicated that 38 percent of FDIC respondents who stated they had experienced sexual harassment said that they did not report the incident(s) for "fear of retaliation." Nearly 40 percent of FDIC respondents did not know, or were unsure, how to report allegations of sexual harassment. Further, almost 44 percent of the FDIC respondents to the OIG survey felt that the FDIC should provide additional training on sexual harassment. Given these responses, the FDIC should do more to prevent and address sexual harassment.

Absent a strategy to acknowledge employees and supervisors and without adequate policies, procedures, training, and metrics, the FDIC cannot ensure that it has taken all of the steps necessary to prevent sexual harassment; facilitate reporting; and promptly and effectively address sexual harassment allegations.

Recommendations

Our report contains 15 recommendations to improve the FDIC's activities to prevent and address sexual harassment. These recommendations addressed four broad areas: improving policies and procedures relating to FDIC actions in response to sexual harassment misconduct allegations; promoting a culture in which sexual harassment is not tolerated and such allegations are promptly investigated and resolved; ensuring consistent discipline; and enhancing training for employees and supervisors. The FDIC concurred with 12 of the 15 recommendations and provided alternative actions to address the remaining 3 recommendations.

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July 10, 2020

Subject | ***Preventing and Addressing Sexual Harassment***

According to the Merit Systems Protection Board Update on Sexual Harassment in the Federal Workplace,[1] "[a]gencies have a responsibility to take steps to eliminate sexual harassment, because it is both illegal and harmful to employee productivity, satisfaction, and retention." The U.S. Equal Employment Opportunity Commission (EEOC) recognizes in its regulation entitled Guidelines on Discrimination Because of Sex (2016), "prevention is the best tool for the elimination of sexual harassment."[2] This Federal regulation also states that an agency can be held "responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action."[3]

Sexual harassment in an organization can have profound effects and serious consequences for the harassed individual, fellow colleagues, and the agency as a whole. It can undermine an agency's mission by creating a hostile work environment that lowers productivity and morale, affects the agency's reputation and credibility, and exposes the agency to judgments for monetary damages. According to media reports,[4] victims of sexual harassment often avoid reporting the alleged harassment for fear of retaliation, including job loss.

Establishing an effective sexual harassment prevention program and addressing sexual harassment allegations in a prompt and effective manner can protect employees and the agency from such harm and costs. We noted that the EEOC has identified five core principles for preventing and addressing harassment. These five core principles are referred to throughout the EEOC's harassment-related publications, including the *Promising Practices for Preventing Harassment* (November 2017). These five core principles for preventing and addressing harassment include:

1. Committed and engaged leadership;
2. Strong and comprehensive harassment policies;
3. Trusted and accessible complaint procedures;

[1] U.S. Merit Systems Protection Board Research Brief, *Update on Sexual Harassment in the Federal Workplace* (March 2018).
[2] 29 C.F.R. § 1604.11(f) (2015).
[3] 29 C.F.R. § 1604.11(d) (2015).
[4] The Wall Street Journal, *After #MeToo, Those Who Report Harassment Still Risk Retaliation* (December 12, 2018); Gizmodo, *Google Contractors Say Reporting Process for Sexual Misconduct Remains Flawed* (November 9, 2018); Institute for Women's Policy Research briefing paper, *Sexual Harassment and Assault at Work: Understanding the Costs (*October 15, 2018).

4. Regular, interactive training tailored to the audience and the organization; and
5. Consistent and demonstrated accountability.

The evaluation objective was to determine whether the FDIC had established an adequate sexual harassment prevention program, including policies, procedures, and training to facilitate the reporting of sexual harassment allegations and address reported allegations in a prompt and effective manner.

We assessed the FDIC's sexual harassment-related policy, procedures, training, and practices for the period January 2015 through April 2019. As part of our evaluation, we conducted a voluntary survey of FDIC employees. The survey responses provided insight into employee understanding of what constitutes sexual harassment, instances of sexual harassment experienced or observed at the FDIC, impediments to reporting, and the adequacy of training. We also reviewed a sample from the FDIC sexual harassment allegation files and interviewed personnel in the Office of Minority and Women Inclusion (OMWI), Division of Administration (DOA), Legal Division, and Internal Ombudsman.

We conducted this evaluation in accordance with the Council of the Inspectors General on Integrity and Efficiency *Quality Standards for Inspection and Evaluation*. Appendix 1 includes additional details on our objective, scope, and methodology. Additional appendices include acronyms and abbreviations, the Agency's comments on a draft of this report, and a summary of the Agency's corrective actions.

BACKGROUND

Defining Sexual Harassment

Federal statute does not explicitly define what constitutes "sexual harassment" in the Federal workplace. The facts in each case determine whether conduct constitutes unlawful sexual harassment or misconduct. Depending on the conduct and surrounding facts, sexual harassment in the Federal Government can result in a finding of: (1) unlawful sex discrimination, in violation of Title VII of the Civil Rights Act of 1964 (referred to herein as "unlawful sexual harassment");[5] and/or (2) a

[5] 42 U.S.C. § 2000e-2(a)(1).

misconduct violation of an agency's harassment policies or standards of conduct (referred to herein as "sexual harassment misconduct").[6]

The EEOC defines the term, "sexual harassment," to include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.[7] Sexual harassment is considered unlawful "when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."[8]

EEOC regulations present criteria for evaluating whether unwelcome conduct of a sexual nature constitutes unlawful sexual harassment in violation of Title VII of the Civil Rights Act.[9] According to EEOC guidance, unlawful sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim or the harasser may be a woman or a man.
- The victim may or may not be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim can be the person harassed or anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.[10]

Unlawful sexual harassment under Title VII does not include all conduct that may constitute harassment. For example, according to the EEOC, unlawful sexual harassment does not include simple teasing, offhand comments, or isolated incidents that are not very serious.[11] However, such behavior could constitute inappropriate conduct (sexual harassment misconduct) in violation of agency policies or standards of conduct and could result in disciplinary action.[12]

[6] There are other causes of action that might arise from conduct involving sexual harassment, including for example, assault and/or battery, intentional infliction of emotional distress, or a finding of a prohibited personnel practice. However, such actions are outside the scope of this evaluation.
[7] EEOC website, Sexual Harassment, https://www.eeoc.gov/laws/types/sexual_harassment.cfm (November 2019).
[8] 29 C.F.R. § 1604.11(a) (2015).
[9] 29 C.F.R. § 1604.11 (2015).
[10] EEOC website, *Facts About Sexual Harassment*, https://www.eeoc.gov/eeoc/publications/fs-sex.cfm (November 2019).
[11] EEOC website, Sexual Harassment, https://www.eeoc.gov/laws/types/sexual_harassment.cfm (November 2019).
[12] EEOC website, Sexual Harassment, https://www.eeoc.gov/laws/types/sexual_harassment.cfm (November 2019).

Preventing Sexual Harassment

The EEOC identifies five core principles for preventing and addressing harassment that relate to leadership, policies, procedures, training, and accountability. Although these principles are not legal requirements under Federal employment discrimination laws, they may enhance an employer's compliance efforts. As many employers recognize, adopting proactive measures may prevent harassment from occurring. Employers implement a wide variety of creative and innovative approaches to prevent and correct harassment. According to the EEOC's Select Task Force on the Study of Harassment in the Workplace (EEO Harassment Study):

> [A] commitment (even from the top) to a diverse, inclusive, and respectful workplace is not enough. Rather, at all levels, across all positions, an organization must have systems in place that hold employees accountable for this expectation. Accountability systems must ensure that those who engage in harassment are held responsible in a meaningful, appropriate, and proportional manner.

Addressing Allegations of Sexual Harassment

In 2003, the EEOC issued Equal Employment Opportunity (EEO) *Management Directive 715*, which requires Federal agencies to establish EEO programs that include policies and procedures for addressing all forms of harassment, including sexual harassment. The requirement includes programs to: (1) process EEO complaints (EEO Complaint Process) and (2) create an environment that is free from sexual and non-sexual harassment (Anti-Harassment Program). According to the EEOC:[13]

> [I]t is important to understand that the EEO process and anti-harassment programs do not exist for the same purposes. The EEO process is designed to make individuals whole [compensate] for discrimination that already has occurred through damage awards and equitable relief paid by the agency and to prevent the recurrence of the unlawful discriminatory conduct. However, the EEO process cannot require an agency to discipline its employees. The internal anti-harassment program, on the other hand, is intended to take immediate and appropriate corrective action, including the use of disciplinary actions, to eliminate harassing conduct regardless of whether the conduct violated the law. Ultimately, the goal of the anti-harassment program is to prevent harassing conduct before it can become severe or pervasive.[14]

[13] *Model EEO Programs Must Have an Effective Anti-Harassment Program.*
[14] EEOC website, Sexual Harassment, https://www.eeoc.gov/laws/types/sexual_harassment.cfm (November 2019).

At the FDIC, there are two processes to address allegations of sexual harassment. Each process is administered by a different division or office within the FDIC. Under the first process, the FDIC OMWI processes discrimination complaints brought by employees, including claims of unlawful sexual harassment, in accordance with EEOC regulations and policies. Such complaints may result in remedies for the complainant, such as payments or corrective action. Under the second process, the DOA oversees allegations of sexual harassment misconduct, pursuant to the FDIC's Anti-Harassment Program. Such allegations may result in an investigation and the imposition of discipline on the offending actor.

When an individual makes an allegation of sexual harassment at the FDIC, the information may trigger the FDIC's EEO Complaint Process, the Anti-Harassment Program process, or both.

EEO Complaint Process

FDIC Circular 2710.2, *EEOC Discrimination Complaint Process* (November 2015), outlines the FDIC's EEO Complaint Process, including the process for initiating and managing individual discrimination complaints involving allegations of unlawful sexual harassment.[15] OMWI oversees and manages the FDIC's EEO Complaint Process.

The first step in the FDIC's EEO Complaint Process is for the victim(s) of harassment (complainant(s)) to report the allegation to an EEO Counselor in OMWI. The EEO Counselor provides information to the complainant on informal options for resolving a complaint, such as traditional counseling or mediation. If these informal options do not result in resolution, the EEO Counselor provides the complainant(s) with a written notice of the rights and responsibilities including the applicable deadline to file a formal complaint of discrimination with the FDIC. In order for OMWI to investigate a particular matter, it must first accept a timely formal complaint.[16] Once accepted, OMWI hires a contractor to investigate the allegation. Following the investigation, OMWI advises the complainant of his/her right to request a hearing before an EEOC Administrative Judge or request a Final Agency Decision on the merits of the complaint. Under this EEOC-regulated process, it is significant whether "harassment" rises to the level of a violation of Title VII because such a finding (as well as any other finding of discrimination) entitles the employee who was the subject of such harassment to remedies.[17]

[15] OMWI processes complaints of all types of discrimination, which can include claims of sex discrimination involving sexual harassment.
[16] OMWI's acceptance of formal complaints is based on criteria listed in EEOC regulations (29 C.F.R. § 1614).
[17] 29 C.F.R. § 1614.501.

Anti-Harassment Program

FDIC Circular 2710.3, *Anti-Harassment Program* (December 2015), outlines the FDIC's Anti-Harassment Program, including the process for reporting harassment allegations and the roles and responsibilities of FDIC employees responsible for implementing the Anti-Harassment Program. The FDIC Circular describes supervisors' responsibilities to maintain a harassment-free workplace and to take immediate action to assess whether alleged harassment occurred. It also provides guidance to supervisors regarding the processing, handling, and resolution of harassment allegations. OMWI administers the Anti-Harassment Program, with additional support from DOA and the Legal Division.

As outlined in the FDIC Circular 2710.3, the first step in the process is for an individual who believes that she/he has been subjected to harassment to report the matter immediately to: (1) a supervisor or manager in her/his chain of supervision; or (2) the Anti-Harassment Program Coordinator (AHPC) located in OMWI. Upon receipt of an allegation, the supervisor, manager, or AHPC must immediately assess the situation and determine whether any immediate interim corrective action is required.

The supervisor and/or manager (or AHPC) must then consult with the Human Resources Branch (HRB), Labor and Employees Relations Section (LERS) and the Legal Division, Labor, Employment and Administration Section (LEAS) (and the AHPC, if not previously involved), and should request assistance in conducting a fact-finding inquiry, investigation, or other action as appropriate.[18] The Circular does not specify how the supervisor, manager, or AHPC determines whom to consult, nor does it indicate criteria by which to evaluate allegations or what conduct should be reported.

The Circular states that, if appropriate, DOA, LERS "will commence the investigation within five (5) business days of the assignment." Upon completion of the investigation, DOA provides information about the findings to the office requesting the investigation and/or to the person responsible for taking corrective action. While not explicitly stated in the Circular, the requesting supervisor or manager receives the investigative results then consults with DOA HR Specialists (LERS) and LEAS, as appropriate, and determines what action should be undertaken, such as disciplinary action.[19] Following this process, the complainant and alleged harasser are notified by a supervisor or manager and/or DOA that the investigation is complete. They are not required, however, to provide either the complainant or the alleged harasser with the results of the investigation. Thus, complainants do not

[18] The Anti-Harassment Program policy is not limited to sexual harassment allegations, and under this policy, FDIC management conducts investigations into a broad range of misconduct.
[19] In proposed disciplinary actions, sexual harassment may sometimes be referred to as "misconduct," "inappropriate conduct," or "unprofessional conduct."

have an opportunity to review the underlying investigative results. The employee who filed the complaint has no entitlement to remedies based on management's investigation.

Roles and Functions in Resolution of Sexual Harassment Allegations

Pursuant to the FDIC EEO Complaint Process and Anti-Harassment Program policy, all FDIC Divisions, Offices, and employees have a role in reporting allegations of sexual harassment and cooperating with investigations of such allegations. As noted previously, OMWI, DOA, and the Legal Division provide support and consultation after an individual reports an allegation.

OMWI. The Director of OMWI has delegated responsibility for the EEO Complaint Process. Within OMWI, EEO Counselors assist with processing unlawful sexual harassment allegations and provide counseling to complainants. They attempt to reach informal resolution of the matters alleged. The AHPC in OMWI administers the Anti-Harassment Program with additional support from DOA and the Legal Division and develops anti-harassment training for FDIC employees. OMWI staff is located in the FDIC's Virginia Square Headquarters Office.

DOA. DOA HRB (LERS) supports the FDIC Anti-Harassment Program by investigating sexual harassment misconduct allegations and assisting supervisors in determining appropriate disciplinary action, as needed. HR Specialists (LERS) are responsible for providing guidance to supervisors[20] about how best to correct potential issues and for conducting investigations of harassment allegations. The Assistant Director (LERS) is responsible for monitoring the status of these investigations for which DOA assigns an HR Specialist (LERS) to investigate the matter.

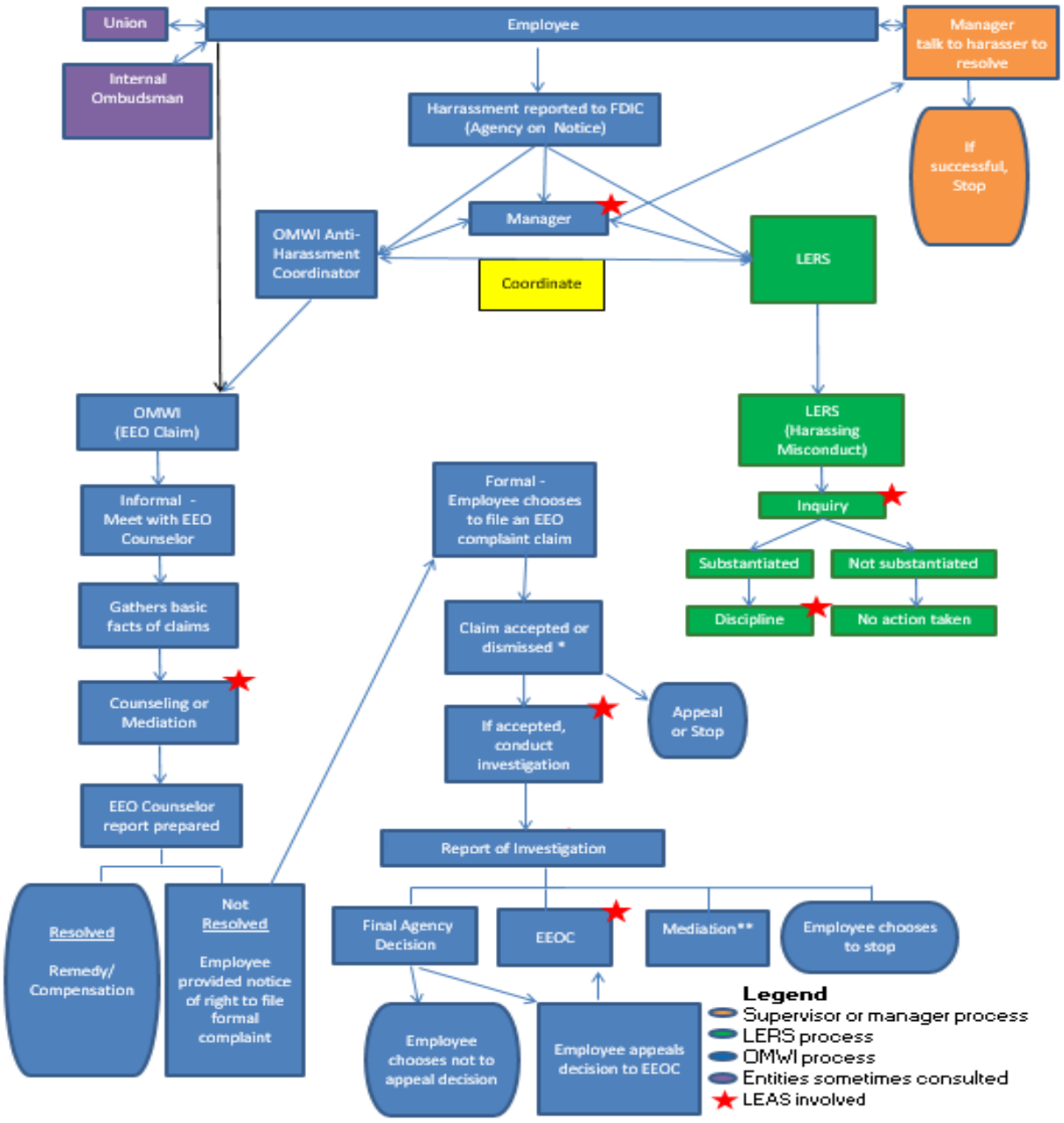
HR Specialists (LERS) are assigned to conduct this work from the Virginia Square Headquarters Office and at each of the FDIC's six Regional Offices.[21] DOA Regional Office Managers oversee HR Specialists (LERS) based in their respective Region, while the Assistant Director (LERS) supervises HR Specialists (LERS) based in the Virginia Square Headquarters Office. HR Specialists (LERS) in the Regional Offices and Headquarters Offices notify the Assistant Director (LERS) when a misconduct allegation investigation is opened or closed, and of the investigation findings. The Assistant Director also verifies the status of assigned investigations with HR Specialists (LERS) every other month. Regardless of location, all HR Specialists (LERS) follow the same policy. However, as discussed below, practices at each location differ.

[20] Office of Inspector General (OIG) supervisors and managers should consult with the OIG Human Resources within the OIG.
[21] The FDIC Regional Offices are in Atlanta, Georgia; Chicago, Illinois; Dallas, Texas; Kansas City, Missouri; New York, New York; and San Francisco, California.

Legal Division. The LEAS serves two roles in addressing sexual harassment allegations. It provides legal advice to LERS during both investigations of sexual harassment misconduct allegations and the disciplinary phase, if applicable. In addition, LEAS represents the FDIC in administrative hearings and Federal court proceedings related to EEO complaints and labor and employment matters. FDIC supervisors and managers also consult with LEAS when notified of an allegation of sexual harassment.

The following Figure presents a graphic describing the FDIC practices for reporting and addressing all types of harassment allegations, including those involving sexual harassment.

Figure: Practices for Reporting and Addressing Sexual Harassment Complaints



*Note, a Complaint can be dismissed entirely (procedural) or partially accepted or dismissed. If dismissed entirely, a Final Agency Decision is issued with appeal rights and it could end. I f partially accepted (some claims dismissed), then an appeal cannot occur on th e dismissed claims until either a hearing before an EEOC Administrative Judge or the Final Agency Decision.,
** At this stage of the process, mediation is not formally included in FDIC policies and procedures but was reported to occur.

Source: OIG compilation from the FDIC's harassment training materials and interviews with OMWI and DOA officials. This graphic was based on FDIC practices; it is not intended to reflect all of the processes laid out in the FDIC's policies and procedures.

Discipline for Sexual Harassment

Federal statutes authorize Federal agencies to take employment actions to discipline employees. Statutes also authorize the Office of Personnel Management (OPM) to prescribe regulations for such actions.[22] The OPM defines discipline as "measures intended to correct employee misconduct that adversely affect the efficiency of the service and to encourage employee conduct in compliance with standards of conduct, policies, goals, work procedures, and office practices of the agency."[23] The OPM regulations do not have specific provisions for sexual harassment.

FDIC Circular 2710.3 provides that "any employee who is found to have harassed anyone while conducting FDIC business shall be subject to disciplinary action, up to and including removal from FDIC employment."[24] FDIC Circular 2750.1, *Disciplinary and Adverse Actions* (January 1999), presents information and guidance to FDIC supervisors on the use of disciplinary and adverse actions at the FDIC. FDIC supervisors, in consultation with DOA and Legal Division personnel, apply discipline for substantiated harassment allegations.[25]

The FDIC may discipline an employee in the following ways, escalating in order of increasing severity: letter of admonishment,[26] letter of reprimand,[27] suspension from duty and pay, reduction in grade or pay, and removal.

Sexual Harassment Allegations at the FDIC

From March 27, 2019 through April 19, 2019, we conducted a survey of all current FDIC employees (5,927), as of March 20, 2019. Our survey results indicated that 8 percent of FDIC respondents (191 of 2,376) said that they had experienced sexual harassment at the FDIC during the prescribed period.

The FDIC reported to the OIG that it received 12 allegations of sexual harassment from January 2015 to April 2019. Among the 12 sexual harassment allegations

[22] 5 U.S.C. § 7501, *et al.* (*Government Organization and Employees*, *Labor-Management and Employee Relations, Adverse Actions)*.
[23] OPM website, *Employee Relations Reference Materials, Glossary of Terms and Concepts*, https://www.opm.gov/policy-data-oversight/employee-relations/reference-materials/#url=Glossary-of-Terms-and-Concepts (November 2019).
[24] We interpret this provision to include any harassment that occurs "while conducting FDIC business," irrespective of whether the actions occur on FDIC premises, during non-work hours, or involve non-FDIC employees.
[25] OMWI officials are not involved in the discipline process.
[26] According to FDIC Circular 2750.1, the management official with delegated authority issues a letter of admonishment as a result of employee misconduct. This is the least severe formal disciplinary action. It is usually issued when prior informal efforts have not corrected the misconduct, or when the misconduct is considered sufficiently serious to warrant issuance without prior warning. It is placed in the employee's Official Personnel Folder typically for a period of 1 year.
[27] According to FDIC Circular 2750.1, a letter of reprimand is similar to a letter of admonishment, but it is placed in the employee's Official Personnel Folder typically for a period of 2 years.

received by the FDIC for this period, we reviewed 9 allegations received during the period January 2015 to June 2018.[28] Within our sample of nine allegations, OMWI addressed two of the nine allegations because the complainants initiated a complaint through the EEO Complaint Process. DOA LERS addressed five misconduct allegations through the Anti-Harassment Program. The FDIC addressed the remaining two allegations through both the EEO Complaint Process and the Anti-Harassment Program.

Among the nine sexual harassment allegations we reviewed, the FDIC resolved seven prior to completion of our evaluation fieldwork, while two remained in process at the conclusion of our fieldwork.[29] Following the investigations, the FDIC substantiated two of the allegations and five of the seven allegations were deemed unsubstantiated. The two substantiated allegations resulted in formal disciplinary action -- a 10-day suspension in one case, and a letter of admonishment in the other.

EVALUATION RESULTS

We found that the FDIC had not established an adequate sexual harassment prevention program and should improve policies, procedures, and training to facilitate the reporting of sexual harassment allegations and address allegations in a prompt and effective manner. Specifically, the FDIC had not developed a sexual harassment prevention program that fully aligned with the five core principles endorsed by the EEOC.

The EEOC's five core principles that have proven effective in preventing and addressing harassment are:

- *Committed and engaged leadership;*
- *Strong and comprehensive harassment policies;*
- *Trusted and accessible complaint procedures;*
- *Regular, interactive training tailored to the audience and the organization; and*
- *Consistent and demonstrated accountability.*

FDIC leadership demonstrated commitment to preventing sexual harassment through annual notices to employees and the FDIC's 2018-2019 *Diversity and Inclusion Strategic Plan*. However, the FDIC had not established a strategy, such as through rewards or performance reviews, to acknowledge employees, supervisors, and managers for creating and maintaining a culture in which harassment is not tolerated; and for

[28] The OIG survey covered the period January 2015 to April 2019. Our sample of allegations covered the period January 2015 to June 2018 to ensure that the FDIC had ample time to address the allegations prior to our review.
[29] At the end of our evaluation, one complaint was pending an EEOC hearing on the merits and the other was on appeal to the MSPB.

promptly reporting, investigating, and resolving harassment complaints. The FDIC should also improve its policies, procedures, and training to ensure that:

- Employees and supervisors know how to identify and report sexual harassment, and ensure reporting does not result in the fear of retaliation;
- Supervisors know how to promptly and effectively address sexual harassment misconduct; and
- Discipline is proportionate to the level of substantiated misconduct.

Finally, the FDIC does not have agency-specific program accountability or oversight practices, including performance goals, metrics, or surveys, to determine program effectiveness in preventing and addressing sexual harassment allegations.

Absent a strategy to acknowledge employees and supervisors and without adequate policies, procedures, training, and metrics, the FDIC cannot be certain that it has taken all of the steps necessary to prevent sexual harassment, facilitate reporting, and promptly and effectively address reported sexual harassment misconduct allegations. As a result, the effects of these shortcomings may result in underreporting of sexual harassment, inconsistent treatment in handling sexual harassment misconduct allegations, and unaddressed misconduct.

Committed and Engaged Leadership

According to the EEOC *Promising Practices for Preventing Harassment,* "the cornerstone of a successful harassment prevention strategy is … clearly, frequently, and unequivocally stating that harassment is prohibited." The FDIC Chairman has committed to a discrimination free workplace. Historically, the Chairman issues annual notices informing employees that the FDIC does not tolerate discrimination or harassment in any form. Also, following the conclusion of the OIG sexual harassment survey in June 2019, the FDIC Chairman issued another notice to employees reiterating that sexual harassment has no place at the FDIC. In addition, the FDIC's 2018-2019 *Diversity and Inclusion Strategic Plan* included an action related to providing training on the prevention of unlawful discrimination, retaliation, and harassment.

Another element from the EEOC *Promising Practices for Preventing Harassment* is "acknowledging employees, supervisors, and managers, as appropriate, for creating and maintaining a culture in which harassment is not tolerated and promptly reporting, investigating, and resolving harassment complaints." We found that the FDIC had not developed or implemented a strategy, such as through the use of performance reviews or rewards, for acknowledging the important roles of all employees, supervisors, and managers to make the FDIC's workplace harassment-free.

Recommendation

We recommend that the Chairman:

1. Develop and implement a strategy for acknowledging employees, supervisors, and managers, as appropriate, for creating and maintaining a culture in which harassment is not tolerated and promptly reporting, investigating, and resolving harassment complaints.

Strong and Comprehensive Harassment Policies

The EEOC's *Promising Practices for Preventing Harassment* recommends "that senior leaders ensure that their organizations . . . have a harassment policy that is comprehensive, easy to understand, and regularly communicated to all employees."

The FDIC Should Update and Enhance its Anti-Harassment Program Policy

FDIC Circular 2710.3 outlines the requirements for FDIC employees to report harassment allegations. It also describes supervisors' responsibilities to maintain a harassment-free workplace and to take prompt and effective action when harassment allegations arise. However, the FDIC Circular does not (1) clearly explain the prohibited conduct by adequately defining terminology involving "sexual harassment"; (2) identify HR Specialists (LERS) as harassment complaint reporting avenues; (3) include roles and responsibilities in both preventing sexual harassment from occurring and monitoring sexual harassment misconduct allegations; and (4) assure employees that immediate, proportionate corrective action (discipline) will be taken when it is determined that harassment occurred. As a result, employees may have difficulty determining what actions and behaviors constitute sexual harassment and how to report it. Consequently, the FDIC may have incomplete information on sexual harassment occurrences, thus improper behavior or misconduct may be left unaddressed or not fully addressed.

(1) Defining Sexual Harassment

The EEOC publication entitled, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors* (June 1999), advises that "an anti-harassment policy and complaint procedures should contain, at a minimum . . . [a] clear explanation of prohibited conduct."

FDIC Circular 2710.3 does not have a clear definition of what constitutes sexual harassment. Instead, the Circular lists the following examples of sexual harassment or harassing conduct and states that such conduct does not necessarily have to be in violation of Federal law or regulation to represent misconduct:

- Threatening that rejection of sexual overtures will affect assignments, appointments, promotions, transfers, or evaluations;
- Making offensive comments, jokes, or suggestions about an employee's gender;
- Making obscene or lewd comments, slurs, jokes, epithets, suggestions, or gestures;
- Commenting repeatedly on an employee's body or sexual characteristics; and
- Displaying nude or sexually suggestive objects, pictures, images, or cartoons.

While these examples may assist employees in identifying sexual harassment, the Circular does not include other forms of sexual harassment as articulated by the EEOC, such as:

- Unwelcome sexual advances;
- Requests for sexual favors; and
- Other verbal or physical harassment of a sexual nature.[30]

(2) Reporting Avenues

The EEOC guidance entitled, *Promising Practices for Preventing Harassment*, states that an effective anti-harassment policy should contain a description of the organization's harassment complaint system and reporting avenues.

FDIC Circular 2710.3 generally describes the FDIC system, which requires employees to take action to stop inappropriate behavior by communicating directly with the harasser, supervisory officials, or the AHPC. During our evaluation, FDIC officials explained that LERS was also an avenue for reporting sexual harassment, although the Circular did not identify HR Specialists (LERS) as a potential avenue for

[30] EEOC website, *Sexual Harassment*, https://www.eeoc.gov/laws/types/sexual_harassment.cfm (November 2019).

reporting sexual harassment. Notwithstanding this omission, our survey revealed that employees are reporting sexual harassment to HR Specialists (LERS).

HR Specialists (LERS) investigate and track sexual harassment misconduct. Unlike OMWI, HR Specialists (LERS) are located in both Headquarters and Regional Offices, which facilitates reporting and face-to-face assistance when sexual harassment occurs. Therefore, including HR Specialists (LERS) as accessible avenues of complaint reporting would facilitate the reporting of sexual harassment misconduct by FDIC employees.

In addition, the Circular contains incorrect contact information for the AHPC, who is the main point of contact for reporting sexual harassment allegations. Having the correct contact information for the AHPC would facilitate reporting by employees.

(3) Roles and Responsibilities for Preventing and Monitoring Misconduct

FDIC Circular 2710.3 describes AHPC roles and responsibilities related to unlawful harassment allegations, but does not include the roles and responsibilities related to allegations of sexual harassment that do not violate the law. The AHPC's responsibilities with respect to unlawful harassment allegations include:

- Advising and providing technical assistance to supervisors;
- Monitoring the effectiveness of the program by maintaining information on the number of allegations of unlawful harassment, bases for the allegations, actions taken, and assessing trends and patterns; and
- Working with other FDIC program officials to prevent unlawful harassment in the workplace through continuing education.

We found that the AHPC complied with FDIC Circular 2710.3 and conducted these activities for unlawful harassment.

However, the FDIC should expand the content of the Circular to include the responsibilities of the AHPC in preventing sexual harassment and monitoring of allegations of sexual harassment misconduct. This would help to ensure the overall effectiveness of the FDIC's Anti-Harassment Program by providing clear guidance and training to employees and supervisors on the prevention of sexual harassment misconduct. It would also enhance employee and supervisor understanding of the roles and responsibilities of the AHPC.

(4) Discipline

EEOC guidance entitled *Promising Practices for Preventing Harassment Employers* states that Anti-Harassment Program policy should ensure that agencies respond to substantiated harassment with discipline that "is prompt, consistent, and proportionate to the severity of the harassment and/or related conduct." Employers should ensure that discipline is consistent and does not give undue favor (or create the appearance of favoritism) toward any particular employee. However, FDIC Circular 2710.3 neither includes this requirement nor refers to FDIC Circular 2750.1, *Disciplinary and Adverse Actions,* policy for further guidance on potential corrective actions.

FDIC Circular 2750.1 sets policy on the FDIC's use of disciplinary and adverse actions, with an explicit goal of administering such actions in a fair and consistent manner. However, this Circular is outdated and does not reflect the current organizational structure. It also does not identify alternative disciplinary action as an option, or include Legal Division responsibilities beyond concurrence on disciplinary and adverse actions.

The EEOC *Promising Practices for Preventing Harassment* states that policies should be periodically reviewed and updated as needed. The FDIC has not updated its Circular 2750.1 on Disciplinary and Adverse Actions in more than 20 years (not since 1999). FDIC Circular 1212.1, *Directives Management Program* (June 2018), requires that FDIC directives be regularly reviewed at least every 5 years and revised as necessary.

FDIC Circular 2750.1 defines responsibilities for supervisors and for the DOA "Personnel Services Branch (PSB)." This outdated nomenclature further demonstrates that the Circular is outdated. The FDIC Circular provides that supervisors are responsible for consulting with the "PSB" for advice and assistance, and for documenting the facts and circumstances warranting consideration of a disciplinary or adverse action. According to the FDIC Circular, the "PSB" is responsible for providing concurrence on all disciplinary and adverse actions, and for obtaining concurrence from the FDIC General Counsel. However, the "PSB" does not exist anymore, as DOA has renamed the PSB as the Human Resources Branch. The FDIC should update the Circular to reflect this name change.

The FDIC Circular 2750.1 also omits options for discipline such as the use of alternative disciplinary actions. For example, OPM recommends "last chance agreements" as a best practice for an alternative to disciplinary action. Under a "last chance agreement," the agency holds disciplinary action in abeyance pending successful completion of a requirement intended to correct inappropriate conduct. In such cases, if the employee does not meet the terms of the "last chance agreement,"

the agency would then impose disciplinary action.[31] The FDIC Circular does not incorporate "last chance agreements" as an option.

Finally, the FDIC Circular does not describe relevant responsibilities performed by the Legal Division, such as legal sufficiency reviews of proposed disciplinary actions and consulting with DOA on final adverse actions before issuance. Although the Legal Division currently performs these duties, the Circular should be updated to reflect current practices.

In May 2019, the FDIC began drafting a revised *Disciplinary and Adverse Actions* Circular to enhance its policy. The enhancements include specific responsibilities for the Legal Division, and the use of alternative discipline, such as "last chance agreements." At the conclusion of our evaluation, the draft Circular had not been finalized.

OIG Survey Results Support Enhancing the Anti-Harassment Policy

In April 2019, we conducted a survey of FDIC employees that indicated approximately 8 percent of FDIC respondents (191 of 2,376) had experienced sexual harassment at the FDIC during the period January 2015 to April 2019. Similarly, in 2016, the Merit Systems Protection Board (MSPB) survey of FDIC employees (based on data from 2014 to 2016) indicated that approximately 9 percent of FDIC respondents (40 of 427) had experienced sexual harassment. The Government-wide average in this MSPB survey was 14 percent. Although 191 FDIC respondents to the OIG survey reportedly experienced sexual harassment, the FDIC only received 12 reported sexual harassment allegations, including both formal EEO complaints and misconduct allegations from January 2015 to April 2019. This suggests there may have been an underreporting of sexual harassment allegations.

There are many reasons why employees may not report sexual harassment, including deciding to ignore the incident, dealing with it themselves, believing the harasser will not be punished, or fearing retaliation.[32] For example, our survey indicated that 38 percent of FDIC respondents (191 of employees) who stated they had experienced sexual harassment said that they did not report the incident(s) for "fear of retaliation."

Additionally, the OIG survey results suggest that employees may not have known how to report such allegations of sexual harassment. Nearly 40 percent of FDIC respondents indicated that they did not know, or were unsure, how to report allegations of sexual harassment. Notably, this figure included 24 of the 191

[31] OPM, *Disciplinary Best Practices and Advisory Guidelines Under the No FEAR Act* (September 2008).
[32] GAO Report, *Equal Employment Opportunity--NIH's Handling of Alleged Sexual Harassment and Sex Discrimination Matters* (GAO/GGD-95-192) (September 1995).

respondents who indicated that they had experienced sexual harassment. Defining what constitutes sexual harassment, the avenues for reporting sexual harassment, the roles and responsibilities for monitoring misconduct, and the discipline policy may improve employee identification and understanding of prohibited conduct and their willingness to report it.

Recommendations

We recommend that the Chairman:

2. Define in FDIC policy the terminology involving sexual harassment and ensure that it includes the EEOC definition.

3. Specify within FDIC policy that HR Specialists (LERS) are avenues for employees to report sexual harassment and correct the contact information for the Anti-Harassment Program Coordinator.

4. Clearly identify in FDIC policy the Anti-Harassment Program Coordinator roles and responsibilities with respect to sexual harassment allegations.

5. Include requirements in FDIC policy for proportionate corrective action (discipline) when harassment is substantiated.

6. Incorporate in FDIC policy options of alternative disciplinary action.

7. Include in FDIC policy Legal Division responsibilities.

Trusted and Accessible Complaint Procedures

The EEOC *Promising Practices for Preventing Harassment* states that developing and implementing trusted and accessible complaint procedures is a key principle to preventing and addressing harassment. Senior leadership should ensure that their organizations “have a harassment complaint system that is fully resourced, is accessible to all employees, has multiple avenues for making a complaint, if possible, and is regularly communicated to all employees.” According to the EEOC, an effective complaint system treats alleged victims, complainants, witnesses, alleged harassers, and others with respect; operates promptly, thoroughly, and impartially; and imposes appropriate consequences for harassment or related misconduct, such as retaliation.

The FDIC Should Develop Written Procedures for Sexual Harassment Misconduct Allegations

FDIC Circular 2710.3 provides guidance describing supervisor responsibilities for responding to sexual harassment allegations. However, DOA does not have written procedures for addressing sexual harassment misconduct allegations, including: (1) tracking; (2) investigating; (3) reporting; and (4) resolving misconduct allegations.[33] According to the EEOC Harassment Study, agency procedures should include the following elements in order to provide employees with confidence in their employer's system for handling sexual harassment in the workplace:

- Devoting sufficient resources to allow the organization to respond promptly and thoroughly to reports of harassment that have been experienced or observed;
- Devoting sufficient resources so that workplace investigations are prompt, objective, and thorough; and
- Documenting all investigative steps taken from the point of first contact with the victim to preparing a written report and timely communicating the results to all relevant parties, including the complainant and harasser.

Procedures for addressing sexual harassment misconduct allegations are especially important given the decentralized nature of the DOA LERS organizational structure. The HR Specialists (LERS) in each of the six Regional Offices report to their respective DOA Regional Manager rather than to the Assistant Director (LERS) in Headquarters. The Assistant Director (LERS) relies on the HR Specialists (LERS) to handle sexual harassment misconduct allegations, which includes conducting investigations, issuing Reports of Investigation, and providing guidance to supervisors regarding disciplinary actions that DOA and the Legal Division recommend for substantiated allegations.

Absent uniform procedures, we found inconsistencies in the FDIC's handling of sexual harassment misconduct allegations. We also found that DOA could neither readily identify the population of sexual harassment misconduct allegations nor identify or assess patterns of harassment either by individuals or within offices. In addition, DOA could not ensure: (1) proper and prompt processing of misconduct allegations; (2) the accuracy of interview summaries; and (3) written notification to the complainant and alleged harasser upon completion of the investigation.

[33] OMWI developed and implemented written procedures for handling allegations of unlawful sexual harassment prior to our fieldwork.

Tracking Allegations of Sexual Harassment Misconduct

The GAO *Standards for Internal Control in the Federal Government* states that policies, procedures, techniques, and mechanisms enforce management's directives to achieve an entity's objectives and address related risks. These GAO Standards state that "quality information is appropriate, current, complete, accurate, accessible, and provided on a timely basis" and that "management uses quality information to make informed decisions and evaluate the entity's performance in achieving key objectives and addressing risks."

The FDIC had not developed requirements for tracking sexual harassment misconduct allegations. We found that DOA's tracking was decentralized, untimely, incomplete, and inaccurate. DOA lacked quality control processes to ensure the integrity of the sexual harassment misconduct allegation tracking. As a result, DOA had difficulty providing a comprehensive inventory of sexual harassment misconduct allegations that the FDIC received during our evaluation period.[34]

Decentralized and Untimely Tracking

DOA tracking of sexual harassment misconduct allegations was decentralized and conducted manually. LERS was responsible for maintaining a master spreadsheet of harassment allegations, including sexual harassment misconduct allegations. The Assistant Director (LERS) compiled the master spreadsheet from information provided by LERS, the Regional Office HR Specialists (LERS), and the AHPC in OMWI. These sources provided this information to the Assistant Director (LERS) in various forms, including emails and phone calls. We found that three Regional Offices used their own spreadsheets, and two Regional Offices used the FDIC's Human Resources system on an ad hoc basis. Moreover, one FDIC Regional Office did not track allegations at all.[35]

This decentralized and manual tracking process did not allow for timely updates to the DOA master spreadsheet and the Assistant Director (LERS) manually updated the master tracking spreadsheet only on a bi-monthly basis. As a result, the master tracking spreadsheet lacked current data.

[34] See Appendix 1 section entitled, *Identifying the Population of Allegations*, for an explanation of the OIG's identification of sexual harassment misconduct allegations.
[35] In contrast, OMWI used commercially available complaint tracking software.

Incomplete and Inaccurate Tracking

DOA did not assign a unique identifier to each allegation. Instead, DOA tracked allegations based upon the date that DOA assigned the allegation to an HR Specialist (LERS). A unique identifier would allow the FDIC to track accurately the allegation from origination to resolution. Using a date as an identifier can present issues if users make mistakes in manually entering information.

DOA also did not track processing timeframes for allegations of sexual harassment misconduct. For example, DOA did not track the original allegation date, investigation start date, interview dates, final report date, or resolution date for each allegation. Therefore, the Assistant Director (LERS) could not determine whether FDIC personnel handled allegations in a prompt manner.

We also found a disparity between the data elements tracked by DOA and OMWI. OMWI tracked the following data elements for formal EEO complaints: name of the complainant; contacts (witnesses, investigator or firm, complainant's attorney or representative); EEO Specialist; type of complaint (actual bases and issues only, such as, harassment, age, and race); and dates when the Specialists entered and updated this information and case events. DOA, however, did not track these same elements. DOA should track similar information for misconduct allegations to improve its analysis of misconduct data. For example, DOA could analyze the workload of HR Specialists (LERS) and determine whether there are recurring witnesses to complaints.

In addition, it is difficult for the FDIC to identify the type of misconduct involved in each harassment allegation, because HR Specialists (LERS) did not consistently document this information. For example, when multiple types of misconduct were alleged, the HR Specialists (LERS) did not record each type of misconduct in the tracking records. Finally, in assessing the completeness of the master spreadsheet during our evaluation field work, we contacted Regional Office HR Specialists (LERS) in an effort to verify that all sexual harassment allegations reported to the Regional Offices also had been included on the master spreadsheet. We found that the LERS master tracking spreadsheet omitted two sexual harassment allegations. One allegation was omitted due to a timing delay in recording the allegation on the DOA master spreadsheet. The other allegation was omitted because the Regional Office HR Specialist (LERS) initially considered the misconduct to be immature behavior but not sexual harassment-related. Our outreach prompted an HR Specialist (LERS) to inform us of a particular allegation that involved inappropriate comments of a sexual nature directed at another employee. As a result, we added it to our population of allegations to review.

DOA personnel acknowledged that they had not prioritized the development of processing procedures and that they lacked effective tools for tracking sexual harassment misconduct allegations. Without centralized, timely, complete, and accurate data, the FDIC cannot understand and rely upon the population of sexual harassment allegations and promptly process misconduct allegations. Additionally, the FDIC is unable to identify patterns of harassment by individuals or within offices over time in order to identify and respond to systemic concerns.

During our evaluation, the Assistant Director (LERS) advised that DOA was in the process of purchasing a new central tracking system. In November 2019, HR Specialists (LERS) had tested the proposed system's capabilities, but the FDIC had not yet implemented the system, nor had it set an implementation date.

Investigating Allegations of Sexual Harassment Misconduct

The FDIC did not have written procedures for investigating sexual harassment misconduct allegations. Consequently, we found inconsistencies in how DOA investigated seven sexual harassment misconduct allegations the FDIC reported receiving from January 2015 through June 2018. Specifically, the DOA processes for preparing interview questions and for conducting and documenting interviews varied among the FDIC Headquarters and Regional Offices, as well as among Regional Offices.[36]

Preparing Interview Questions

According to Legal Division personnel, LEAS is available to assist DOA in investigating a matter in order to ensure that the scope of the investigation is legally sufficient for management to take appropriate action. The EEOC Harassment Study recommends that investigators document the important steps taken as part of the investigation.[37]

We interviewed 10 HR Specialists (LERS) to determine whether they coordinated with the Legal Division attorneys when preparing interview questions for harassment investigations. The HR Specialists (LERS) in one Regional Office and in the Headquarters Office said that they did not coordinate with the Legal Division regarding interview questions. The HR Specialists (LERS) in five Regional Offices said that they coordinated with the Legal Division on investigative questions; however, the investigative file for only one of the four allegations in these Regional Offices contained documentation of this coordination with the Legal Division.

[36] We did not identify concerns with OMWI's processes for preparing interview questions and conducting and documenting interviews related to EEO complaints of unlawful sexual harassment.
[37] Although not required for investigations of sexual harassment misconduct allegations, EEOC studies related to investigations of unlawful sexual harassment allegations may still be applicable as best practices.

Conducting and Documenting Interviews

DOA had not developed procedures for conducting and documenting interviews during investigations of sexual harassment misconduct. Due to the lack of procedures, we identified inconsistent practices from our review of the seven allegations of sexual harassment misconduct. These inconsistencies could result in inaccurate interview summaries.

- For one allegation, the investigator did not complete the interview summaries until 6 months after the initial interviews took place. The investigative files did not contain information indicating whether the interviewees reviewed the summaries.

- For four allegations, the investigative files did not contain information indicating how long it took to complete the interview summaries, or whether the interviewees reviewed the summaries.

- For one allegation, the investigator did not interview the complainant or alleged harasser. Instead, the investigator consulted with the individual who was the supervisor of the complainant and alleged harasser.

- For one allegation, DOA hired a court reporter who completed the interview summaries within 3 weeks of the interviews. The investigator provided the interview summaries to the interviewees within 3 days following receipt of the prepared summaries. The interviewees signed the summaries following their review.

HR Specialists (LERS) with whom we spoke provided various explanations for the inconsistencies we observed. For example, HR Specialists (LERS) in one Regional Office believed that using a court reporter increased the accuracy of the interview documentation. The HR Specialist (LERS) who completed interview summaries 6 months after the interviews took place explained that their office did not have a timeliness requirement for documenting interviews. Having procedures for conducting and documenting interviews should improve consistency among offices.

Reporting Investigative Findings

DOA had not developed procedures for the preparation and review of an investigative summary or Report of Investigation (ROI). The *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614* (August 2015) states that an ROI or "investigative summary is a narrative document that succinctly states the issues and delineates the evidence addressing both sides of each issue in the case. The summary should state facts (supported in the complaint file) sufficient to support

a conclusion(s). The summary should cite to evidence and the exhibits collected." Although not required for investigations of sexual harassment misconduct allegations, EEOC regulations related to ROIs for unlawful sexual harassment allegations are helpful procedures as best practices. Best practices[38] include the following components to help ensure that sufficient facts are included in the investigation summary to sustain a conclusion:

- Clearly specified report scope;
- Summary of the facts of the incident or issue investigated, including specific dates of relevant events;
- List of individuals interviewed;
- List of documents gathered and reviewed;
- Conclusions reached on each key issue identified;
- Conclusion as to whether the allegation was substantiated or unsubstantiated; and
- The report date and the preparer's name.

The FDIC investigative files we evaluated contained most of the information recommended by the EEOC and best practices with limited exceptions.[39]

Notifications to the Complainant and Alleged Harasser

FDIC Circular 2710.3 provides that:

> After the fact-finding inquiry or investigation is completed, the management official and/or a Human Resources Specialist, LERS, DOA, will notify the employee raising the alleged harassing conduct and the individual involved in the alleged harassing conduct, **in writing**, of the completion of the investigation, consistent with the Privacy Act. [Emphasis added.]

DOA did not consistently document these required notifications in the investigative files or elsewhere. DOA could neither provide the written notifications, nor could it readily validate that it had provided written notification of completion of the investigation to the complainant and alleged harasser. According to the Assistant Director (LERS), either HR Specialists (LERS) or supervisors may provide these notifications by e-mail. If so, the notifications may be stored in the e-mail system rather than the investigation file.

[38] United States Department of Agriculture, Food Safety Inspection Service, *Investigative Methodology for Conducting Misconduct, OIG Hotline, and Other Investigations,* May 11, 2020 (FSIS Directive 8021.1)*;* University of California, Office of the President, Ethics, Compliance and Audit Services, *Effective Investigation Reports … Tips to Writing it Right* (2015).

[39] Two of the ROIs did not conclude whether the allegation was substantiated or unsubstantiated. Two of the ROIs omitted the report date. Three of the ROIs omitted the ROI preparer's name.

For the seven sexual harassment misconduct allegations we evaluated, we found that only one investigative file documented that the FDIC had notified both the complainant and alleged harasser in writing. The investigative files for two other allegations documented that the FDIC notified only the alleged harasser in writing. For three other allegations, the investigative file contained no evidence that the FDIC notified either the complainant or the alleged harasser in writing. DOA personnel could not provide any written notifications that were not maintained in the investigative files. The seventh allegation did not result in an investigation and the notification requirement was inapplicable.

FDIC Circular 2710.3 does not identify where FDIC personnel should retain the written notifications. Including a copy of the notification in the investigative file would provide a sense of finality for the complainant and the accused, and it would help the Assistant Director (LERS) and LERS staff ensure FDIC compliance with this requirement. Absent written notification to the complainant and the alleged harasser, these individuals will not know the status of the investigation or when it was completed. Further, such uncertainty fosters a culture in which employees perceive that the FDIC does not properly address misconduct, which can lead to low workforce morale. Importantly, complainants and alleged harassers should have closure regarding matters of such significance.

Recommendations

We recommend that the Chairman:

8. Develop 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.

9. Track 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.

10. Develop and implement procedures for investigating sexual harassment misconduct allegations.

11. Ensure 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.

The FDIC Should Develop Procedures for Disciplinary Actions

The EEOC recommends "that senior leaders ensure that their organizations . . . impose discipline that is prompt, consistent, and proportionate to the severity of the harassment and/or related conduct, such as retaliation, when it determines that such conduct has occurred." The FDIC, however, had not developed procedures with clear standards for applying disciplinary actions for substantiated harassment allegations, including sexual harassment allegations. As a result, supervisors may not have sufficient guidance to determine appropriate discipline and may not apply disciplinary actions in a consistent manner.

Through our research, we identified at least three examples of other Federal departments or agencies that established written procedures for administering appropriate discipline.[40] In these illustrative examples, the agencies included a list of penalties for first-time and repeat offenders and described the steps to be completed prior to taking disciplinary actions.

Other than FDIC Circular 2750.1, *Disciplinary and Adverse Actions* (1999), the FDIC had not documented the process that DOA, the Legal Division, and supervisors should follow when determining discipline. Based on our interviews with personnel in the Legal Division and DOA, and our review of discipline files in two cases of sexual harassment, we determined that the disciplinary actions that the FDIC recommended for the two substantiated allegations aligned with actions taken at other Government agencies for similar conduct. Specifically, the disciplinary actions included a letter of admonishment and a 10-day suspension.

Although the FDIC maintained discipline files for the two disciplinary actions we reviewed, the FDIC had not clearly documented the process that it followed to make the discipline decisions. The FDIC also did not have a comprehensive database of disciplinary actions for review to ensure consistency with the discipline that FDIC personnel imposed in other similar cases. Instead, DOA personnel stated that they searched for similar actions in the Human Resources system, which DOA personnel acknowledged was not consistently updated. DOA personnel also stated that they contacted other DOA offices in order to determine the type of disciplinary action taken in similar cases.

FDIC Circular 2750.1 states that it is the policy of the FDIC to "administer disciplinary and adverse actions in a fair and consistent manner." Without written procedures and a database of prior disciplinary actions, FDIC supervisors may not have adequate guidance to determine appropriate discipline, and the agency risks taking

[40] These examples include the U.S. Department of Agriculture, U.S. Fish and Wildlife Service, and Transportation Security Administration.

inconsistent disciplinary actions for similar sexual harassment misconduct. Inconsistent disciplinary action could lead to allegations of discrimination or inconsistent treatment of similarly situated individuals, which could undermine confidence in the FDIC's disciplinary system and expose the FDIC to litigation. Further, if the disciplinary action is too lenient, it may not correct the underlying misconduct and deter recurrence.

Recommendations

We recommend that the Chairman:

12. Develop and implement procedures to ensure that supervisors take consistent disciplinary actions for substantiated sexual harassment, in line with Federal government law on imposing disciplinary actions.

13. Develop and implement a comprehensive, centralized database of disciplinary actions, including those associated with sexual harassment.

Regular Training Tailored to the Audience and the Organization

The EEOC recommends:

> [T]hat senior leaders ensure that their organizations . . . regularly and effectively train all employees about the harassment policy and complaint system [and] regularly and effectively train supervisors and managers about how to prevent, recognize, and respond to objectionable conduct that, if left unchecked, may rise to the level of prohibited harassment.

The FDIC Should Provide Employees and Supervisors with Adequate Training

Since the FDIC revised Circular 2710.3 in 2015, FDIC employees have not consistently received adequate training on how to effectively prevent, identify, and report harassment in the workplace, including sexual harassment. In addition, FDIC supervisors have not received adequate training on a consistent basis. In particular, the FDIC should provide additional training on how to respond quickly and effectively to reports of harassment in the workplace. Therefore, FDIC employees may not know how to report sexual harassment allegations and FDIC supervisors may not respond to reported allegations in a prompt and effective manner.

The EEOC Harassment Study concluded that effective training is a necessary tool to prevent harassment in the workplace, and a harassment prevention program should include:

- Regular compliance training for all employees so they can recognize prohibited forms of conduct and know how to use the reporting system; and
- Regular compliance training for supervisors so they know how to prevent and/or respond to workplace harassment.

Training Frequency and Content

The EEOC Harassment Study states that successful, anti-harassment training:

> [S]hould be conducted and reinforced on a regular basis for all employees …. If anti-harassment trainings are held once a year (or once every other year), employees will not believe that preventing harassment is a high priority for the employer. Conversely, if anti-harassment trainings are regularly scheduled events in which key information is reinforced, that will send the message that the goal of the training is important.

The EEOC *Promising Practices for Preventing Harassment* states:

> Strong harassment policies and complaint systems are essential components of a successful harassment prevention strategy, but only if employees are aware of them. Regular, interactive, comprehensive training of all employees may help ensure that the workforce understands organizational rules, policies, procedures, and expectations, as well as the consequences of misconduct. Harassment training may be most effective when it is tailored to the organization and audience.

FDIC Circular 2710.3 does not specify the frequency of anti-harassment training for employees and supervisors.

The EEOC Harassment Study further states that the content of harassment prevention training for employees and supervisors should include the following elements:

For All Employees

A. A description of illegal (unlawful) harassment (of any kind), and conduct that, if left unchecked (misconduct), might rise to the level of illegal harassment;
B. Examples that are tailored to the specific workplace and specific workforce;
C. Instructions to the employees about their rights and responsibilities if they experience harassment that is not acceptable in the workplace;
D. A description, in simple terms, of the process for reporting harassment that is experienced or observed;
E. An explanation of the consequences of engaging in conduct unacceptable in the work place, and
F. A prohibition against retaliation.

For Supervisors Only

G. Easy-to-understand and realistic methods for dealing with harassment:
    1. They observe;
    2. Reported to them; and
    3. They have knowledge of or information about;
H. Clear instructions on how to report harassment through the chain of command;
I. Description of sanctions for failing to respond or report; and
J. Encouragement to assess the workforce for risk factors of harassment.

FDIC Circular 2710.3 addresses much of the content recommended by the EEOC.

We assessed the anti-harassment training the FDIC conducted from February 2015 to June 2019 to determine the training frequency, the level of participation, and the content. Table 1 summarizes the FDIC training that covered harassment during the period February 2015 through June 2019. The training elements reflected in Table 1 correspond with the training content recommended by the EEOC, as presented above.

Table 1: Summary of FDIC Training Covering Harassment, 2015 – 2019

Recommended Training Element *	EEO & Diversity Workshop Supervisors	EEO for Supervisors	AHP for Supervisors	AHP for Employees	No FEAR Act *** 2016 for Employees	No FEAR Act *** 2019 for Employees
Training Timeframe	**2015 through 2018**	**2015 through 2019**	**2016**	**2016**	**2016 through 2018**	**2019**
Frequency/Requirement	**Biennial Mandatory**	**Once** Mandatory**	**Once Voluntary**	**Once Voluntary**	**Biennial Mandatory**	**Biennial Mandatory**
For All Employees						
A. Description of harassment:						
1. Unlawful	-	✓	✓	✓	✓	✓
2. Misconduct.	-	-	✓	-	-	-
B. Tailored examples of sexual harassment.	-	✓	-	-	✓	✓
C. Rights and responsibilities if you experience harassment.	-	-	✓	✓	✓	✓
D. The process for reporting harassment and complaints.	-	-	✓	✓	✓	✓
E. Consequences of engaging in unacceptable conduct.	-	-	-	-	-	-
F. Prohibition against retaliation.	✓	✓	-	-	✓	✓
For Supervisors Only						
G. Methods for dealing with harassment:	✓	✓	✓	**NA**	**NA**	**NA**
1. They observe,	-	✓	-	**NA**	**NA**	**NA**
2. Reported to them,	-	✓	✓	**NA**	**NA**	**NA**
3. Have knowledge or information about.	-	✓	-	**NA**	**NA**	**NA**
H. Report harassment up the chain of command.	-	✓	✓	**NA**	**NA**	**NA**
I. Sanctions for failing to respond or report.	-	✓	-	**NA**	**NA**	**NA**
J. Assessing their workforce for risk factors of harassment.	✓	✓	-	**NA**	**NA**	**NA**

Source: OIG analysis of FDIC training materials from 2015 through 2019.

Legend: ✓ The source identified this item. **-** The source did not mention this item. **NA** – Not Applicable.

***** EEOC Harassment Study. ****** Every new supervisor is required to take this Web-based course once, upon becoming a supervisor. ******* *Notification and Federal Employee Antidiscrimination and Retaliation Act* (No FEAR Act).

As shown in Table 1, the FDIC did not provide annual anti-harassment training, and the training provided did not address all recommended training content. Over time, the FDIC added examples of sexual harassment to the mandatory No FEAR Act training. However, the FDIC should further enhance the training for 2020 to include a description of misconduct and the potential consequences that employees will face for engaging in unacceptable conduct as shown in the table above.

Training Participation

OMWI officials said that it is difficult to achieve high participation rates for training unless the training is mandatory. However, they added that mandatory training generally occurs only where there is either a statutory or an FDIC requirement for the training. For example, all employees must attend statutorily mandated biennial No FEAR Act training, and all supervisors must attend the FDIC-required biennial EEO and Diversity Workshops. A high percentage of FDIC employees and supervisors attend such mandatory training. On the other hand, only about 2 percent of employees and 19 percent of supervisors attended the voluntary training on the FDIC's Anti-Harassment Program in 2016. FDIC Circular 2710.3 neither mandates attendance nor specifies the frequency for anti-harassment training.

OIG Survey Results Relevant to Training

We found that 52 percent of the 2,376 FDIC employees/supervisors who responded to the OIG survey either had not received, or were unsure whether they had received, sexual harassment training. In addition, 40 percent of survey respondents did not know, or were unsure, how to report sexual harassment at the FDIC, and about 44 percent of respondents believed that the FDIC should provide additional training on sexual harassment. Table 2 presents the responses of 2,376 employees to the OIG survey questions relevant to sexual harassment training.

Table 2: Responses to Survey Questions Relevant to Sexual Harassment Training

Question	Yes	Number of Employees	No	Number of Employees	Unsure	Number of Employees
Since January 1, 2015, have you received training focused on sexual harassment while employed by or working at the FDIC?	47.64%	1132	22.56%	536	29.80%	708
Do you believe additional sexual harassment training should be provided by the FDIC?	43.90%	1043	35.31%	839	20.79%	494
Do you know how to report sexual harassment at the FDIC?	60.23%	1431	23.40%	556	16.37%	389

Source: OIG April 2019 survey of FDIC employees.

Our evaluation and survey results indicate that some FDIC employees and supervisors may not clearly understand what constitutes sexual harassment and how to report it. Therefore, the FDIC should provide training on how to prevent, identify, and report sexual harassment.

In addition, although the FDIC's mandatory training reinforced the Agency policy against retaliation, the OIG survey found that 38 percent (72 of 191) of the respondents who said that they had experienced sexual harassment indicated that they did not report it for "fear of retaliation." Therefore, the FDIC should consider ways to enhance training materials in order to ensure that agency employees understand the policy and feel comfortable reporting allegations of sexual harassment.

Recommendation

We recommend that the Chairman:

14. Enhance employee and supervisor training on identifying and reporting sexual harassment, to include the training content recommended by the EEOC.

Consistent and Demonstrated Accountability

The fifth core principle from the EEOC *Promising Practices for Preventing Harassment* is that senior leaders exercise appropriate oversight of the harassment policy, complaint system, training, and any related preventive and corrective efforts, which may include:

- Periodically evaluating the effectiveness of the organization's strategies to prevent and address harassment, including reviewing

and discussing preventative measures, complaint data, and corrective action with appropriate personnel;

- Directing staff to periodically, and in different ways, test the complaint system to determine if complaints are received and addressed promptly and appropriately; and

- Ensuring that any necessary changes to the harassment policy, complaint system, training, or related policies, practices, and procedures are implemented and communicated to employees.

According to the EEOC, both the organization and its employees must demonstrate accountability. An organization that implements an effective anti-harassment program communicates its accountability to employees. Accountable employees, including contractors, should be familiar with and follow the anti-harassment policy, refrain from engaging in unwelcome conduct or harassment, and promptly report incidents of harassment. Individuals who engage in harassment are accountable for those actions with the possibility of discipline in proportion to the offensiveness of their conduct. Mid-level managers and front-line supervisors are accountable for preventing and responding to workplace harassment. According to the EEOC, to maximize effectiveness in preventing and addressing harassment, senior leaders can seek feedback about their anti-harassment efforts by, for example:

(1) Conducting Climate Surveys

Managers can conduct climate surveys or anonymous employee surveys on a regular basis to assess the extent to which harassment exists in the workplace and is perceived to be tolerated.

(2) Partnering with Researchers

Managers can partner with researchers to evaluate the organization's harassment prevention strategies. The EEO Harassment Study reported that "[s]everal researchers have developed such climate surveys, and the military has adopted them on a widespread scale in recent years." Also, the National Aeronautics and Space Administration (NASA) has a partnership with OPM to provide technical assistance on the design and implementation of data/analytical tools (for example, climate surveys), and evaluation methods to assess the effectiveness of NASA's Anti-Harassment Campaign.[41]

[41] *NASA Anti-Harassment Campaign and Programs: Enabling the Safety and Effectiveness of Our Workforce and Mission* (October 23, 2018).

(3) Using Metrics and Performance Reviews

Metrics can be used to measure the number of complaints lodged per individual or division and the variation in the number of harassment allegations yearly to evaluate the organization's leadership and program success towards a workplace free of harassment. Metrics can also measure the average processing time of sexual harassment allegations. Organizations may include a metric in a manager's performance plan to hold them accountable in responding appropriately to harassment complaints.

The FDIC does not have agency-specific program oversight practices, including performance goals, metrics, or surveys related to determine its effectiveness in preventing and addressing sexual harassment allegations. Absent these oversight practices, the FDIC may not be able to assess the effectiveness of its sexual harassment prevention program and whether the handling of such allegations is prompt and effective.

Recommendation

We recommend that the Chairman:

15. Develop oversight mechanisms to assess the effectiveness of the FDIC's sexual harassment prevention efforts and determine whether the FDIC is addressing sexual harassment allegations in a prompt and effective manner.

FDIC COMMENTS AND OIG EVALUATION

On June 16, 2020, the FDIC's Deputy to the Chairman and Chief Operating Officer, on behalf of the Agency, provided a written response to a draft of this report (FDIC Response), which is presented in its entirety in Appendix 3. We reviewed and considered the comments in the FDIC response.

In its response, the FDIC stated its belief that it has a robust anti-harassment program and disagreed with our conclusion that the FDIC's Anti-Harassment Program was inadequate.

The FDIC, however, did not dispute the underlying findings that led to the conclusion that the program was inadequate. For example, an important component of a robust Anti-Harassment Program is having trusted and accessible complaint procedures and yet, our evaluation found that:

- The FDIC's tracking of misconduct allegations was decentralized, untimely, incomplete, and inaccurate;
- The FDIC did not have written procedures for investigating sexual harassment misconduct allegations;
- DOA had not developed procedures for the preparation of an investigative summary or Report of Investigation; and
- DOA did not consistently document the required notifications after completion of an investigation.

The FDIC agreed to take corrective actions in response to our recommendations. These corrective actions by the FDIC will substantially improve the FDIC's sexual harassment prevention efforts and its ability to address reported allegations in a prompt and effective manner. Specifically, the FDIC agreed to:

- Update its supervisory performance management system and refine performance plans to bolster existing standards and hold supervisors accountable for cultivating a culture in which harassment is not tolerated;
- Update its Anti-Harassment Program Directive to better define sexual harassment, identify points of contact, and clarify roles and responsibilities;
- Update its Disciplinary and Adverse Actions Directive to include options for alternative discipline and Legal Division responsibilities;
- Implement a new case management system, to include tracking allegations of sexual harassment made under the Anti-Harassment Program Directive;
- Document a Standard Operating Procedure (SOP) that includes procedures for investigating allegations of misconduct, including sexual harassment;

- Notify the complainant and alleged harasser when an investigation is complete and retain such written notifications;
- Implement a new case management system, that will include a centralized database of disciplinary actions, including those associated with sexual harassment;
- Develop and implement employee and supervisor training, that will include identifying and reporting sexual harassment, including training content recommended by the EEOC; and
- Develop appropriate oversight mechanisms to measure the effectiveness of the FDIC's Anti-Harassment Program.

Although the FDIC agreed to take substantial corrective actions, it took exception with some of the conclusions in our report as discussed below:

Leadership and Accountability

The FDIC Response stated that "[a]t the FDIC, the commitment to a workplace free of harassment emanates from the highest levels of agency management" and the "FDIC Performance Goals further demonstrate the importance that [the FDIC places] on accountability." As such, the FDIC "disagrees with the OIG's conclusion that the FDIC had not established a strategy for maintaining a culture where harassment is not tolerated and is promptly addressed."

These statements mischaracterize the conclusions in our report. As stated in the report, our evaluation recognized and clearly stated that "[t]he FDIC Chairman has committed to a discrimination free workplace" and that "FDIC leadership demonstrated commitment to preventing sexual harassment through annual notices to employees and the FDIC's 2018-2019 *Diversity and Inclusion Strategic Plan*." We did not, however, conclude "the FDIC had not established a strategy for maintaining a culture where harassment is not tolerated and is promptly addressed," as stated in the FDIC Response.

Instead, our finding narrowly focused on improving a component of leadership and accountability. That component relates to acknowledging employees, supervisors, and managers through rewards or performance reviews for creating and maintaining a culture in which harassment will not be tolerated. For this particular component, the FDIC agreed to update its supervisory performance management system and refine performance plans. The FDIC's actions are responsive to our finding and recommendation to bolster existing standards and hold supervisors accountable for cultivating a culture in which harassment will not be tolerated.

Anti-Harassment Program

The FDIC Response stated that the "OIG's characterization of the FDIC's current anti-harassment program as inadequate does not sufficiently reflect fundamental program elements that the FDIC has in place." The FDIC further stated that its program "comports with the EEOC's regulations on sexual harassment" and noted that "the OIG has not concluded otherwise."

This statement misrepresents our report findings. Our report clearly demonstrates that the FDIC has not taken all steps necessary to prevent sexual harassment from occurring, and the report provides substantial support for such a determination. Our evaluation found that the FDIC needs to improve its policies, develop and implement procedures for tracking and investigating complaints, develop and implement procedures for discipline, improve its training, and develop and implement oversight mechanisms for measuring the effectiveness of its program.

The FDIC Response asserted that we suggested, "the FDIC's Anti-Harassment Program is deficient because only a relatively small percentage of those individuals who reported experiencing sexual harassment at the FDIC [in response to the OIG survey] actually pursued these allegations under the FDIC's Anti-Harassment Program." That is not an accurate portrayal of our findings. Our survey results and the low allegation reporting rate were not the only basis for concluding that the Anti-Harassment Program is deficient. As discussed above, we identified deficiencies in the policies, procedures, training, and measurement of the effectiveness of the program. In addition, our survey results were consistent with the findings of the MSPB survey that had been previously conducted in 2016.

The FDIC further observed that "there are multiple reasons why employees opt not to utilize an agency's anti-harassment program, and an employee's failure to do so is not necessarily due to a deficiency in the program itself." The FDIC cited fear of retaliation as a common reason given by employees throughout the Federal government for not reporting incidents of harassment.

Indeed, our report acknowledged that there are many reasons why employees may not report sexual harassment. We specifically noted that 38 percent of FDIC survey respondents who stated they had experienced sexual harassment also reported that they did not report the incident(s) for "fear of retaliation."

Finally, the FDIC response stated that "the OIG's report ignores the possibility that an employee's desire to address these issues in a more informal way [through their supervisors] may be a basis for the potential under-utilization of the Anti-Harassment Program." This position, however, ignores the fact that all allegations reported to supervisors are required by FDIC Circular 2710.3 to be reported to the Anti-

Harassment Program Coordinator, and the Coordinator is then required to track all allegations of sexual harassment. Therefore, any allegations reported to supervisors should have been included in the pool of sexual harassment allegations reported from January 2015 to April 2019. The FDIC identified only 12 reported allegations during this timeframe. By comparison, in responding to our survey, 191 FDIC employees stated that they had experienced sexual harassment during this timeframe.

OIG's Disposition of the Recommendations

The FDIC concurred with 12 of the 15 recommendations and provided alternative actions to address the remaining 3 recommendations. We accepted the FDIC's alternative action for Recommendation 1 and therefore, we consider the following 13 recommendations to be resolved – Recommendations 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 13, 14, and 15.

With respect to Recommendations 5 and 12, the FDIC proposed alternative actions that were not responsive to our recommendations. They will remain unresolved, and we will seek resolution during the evaluation follow-up process. Our disposition of Recommendations 5 and 12 are discussed below:

Recommendation 5. Include requirements in FDIC policy for proportionate corrective action (discipline) when harassment is substantiated.

The FDIC stated that it partially concurred with the recommendation and provided an alternative action. The FDIC stated it would update its Disciplinary and Adverse Actions Directive to ensure that it includes requirements for corrective action for misconduct but stated that it does not believe it is appropriate to require "consistent" disciplinary actions for "substantiated" sexual harassment. The FDIC also stated that if an employee is charged with "harassment," an agency must prove that the employee's actions rise to the level of harassment prohibited under Title VII or other civil rights laws. Otherwise, the charge fails, and the employee cannot be disciplined.

The FDIC Response incorrectly infers a specific definition of "harassment" in our recommendation and ignores the OIG's explanation of the two different categories of allegations referenced in our report. Our report identified two categories of allegations: (i) sexual harassment in violation of Federal law (Title VII of the Civil Rights Act (Title VII)), referred to as "unlawful sexual harassment"; and (ii) misconduct involving sexual harassment that does not rise to the level of violating Federal law, referred to as "sexual harassment misconduct." The FDIC response also overlooks the premise of our recommendation: to ensure the exercise of

proportionate discipline when harassment (whether unlawful or misconduct) is substantiated.

The FDIC Response states that LERS and LEAS advise managers to ensure that penalties for similar conduct are generally consistent with one another, regardless of how the misconduct is labeled. The FDIC stated that this concept is already embedded in the FDIC's Disciplinary and Adverse Action Directive, and it believes that the FDIC's current procedures for administering disciplinary action are adequate.

However, as noted in our report, EEOC states that Anti-Harassment Program policy should ensure that agencies respond to substantiated harassment with discipline that "is prompt, consistent, **and proportionate** to the severity of the harassment and/or related conduct." The FDIC's current policy and proposed actions do not address the "proportionate" element of this recommended guidance. The OIG will seek resolution of this recommendation during the evaluation follow-up process.

Recommendation 12. Develop and implement procedures to ensure that supervisors take consistent disciplinary actions for substantiated sexual harassment, in line with Federal government law on imposing disciplinary actions.

The FDIC stated that it partially concurred with the recommendation and provided an alternative action. The FDIC stated that it will update its Disciplinary and Adverse Actions Directive to ensure that it includes requirements for corrective action for misconduct. Our recommendation, however, is to develop and implement procedures, not just update its Policy Directive. As we noted in our report, the FDIC had not developed procedures with clear standards for applying disciplinary actions for substantiated harassment allegations, including sexual harassment allegations. As a result, supervisors may not have sufficient guidance to determine appropriate discipline and may not apply disciplinary actions in a consistent manner. The OIG will seek resolution of this recommendation during the evaluation follow-up process.

Objective

Our evaluation objective was to determine whether the FDIC had established an adequate sexual harassment prevention program, including policies, procedures, and training to facilitate the reporting of sexual harassment allegations and address reported allegations in a prompt and effective manner.

We performed our work from July 2018 through June 2019 at the FDIC's offices in Arlington, Virginia and Dallas, Texas. We performed our work in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Scope and Methodology

The scope of our work included reviewing activities of OMWI, DOA, and the Legal Division as they related to reporting, handling, and resolving sexual harassment allegations from 2015 to April 2019. Out of the 12 allegations of sexual harassment the FDIC reported receiving for that period, we reviewed complaint handling and resolution for the 9 allegations the FDIC reported receiving for the period January 2015 through June 2018.

To achieve our evaluation objective, we gained an understanding of the FDIC's policies and practices for reporting, handling, and resolving sexual harassment allegations. We reviewed FDIC policies and procedures related to discrimination complaints, harassment complaints, and internal controls, including:

- *FDIC Grievance Procedures* (Circular 2140.1) (February 2016);
- *Equal Opportunity Policy* (Circular 2710.1) (November 2015);
- *EEOC Discrimination Complaint Process* (Circular 2710.2) (November 2015);
- *Anti-Harassment Program* (Circular 2710.3) (December 2015);
- *FDIC Discrimination Complaint Process* (Circular 2710.4) (November 2015);
- *Disciplinary and Adverse Actions* (Circular 2750.1) (January 1999); and
- *Enterprise Risk Management and Internal Control Program* (Circular 4010.3) (October 2018).

We also reviewed Federal regulations, management directives, and best practices relevant to sexual harassment, including:

- 29 C.F.R. § 1604 – *Guidelines on Discrimination Because of Sex* (2015);
- *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614* (EEO-MD-110) (August 2015);

- EEOC*, Promising Practices for Preventing Harassment* (November 2017);
- EEOC, *Select Task Force on the Study of Harassment in the Workplace;*
- EEOC*, Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors* (June 1999);
- United States Department of Agriculture, *Investigation Methodology for Conducting Misconduct, OIG Hotline, and Other Investigations, June 29, 2011 (FSLS Directive 8021.1);* and
- University of California Office of the President, *Effective Investigation Reports.*

We interviewed FDIC personnel, including:

- OMWI staff to understand their process for handling and resolving sexual harassment allegations reported through the Equal Employment Opportunity process and their role in coordinating the Anti-Harassment Program;

- DOA HR Specialists (LERS) to understand their process for investigating and tracking sexual harassment allegations reported through the Anti-Harassment Program and their role in advising FDIC management on discipline for substantiated sexual harassment allegations;

- DOA Acquisition Services Branch staff to obtain an understanding of contract language and authorities in situations in which an FDIC contractor alleges sexual harassment or when a contractor employee is accused of sexual harassment;

- Legal Division staff to understand their role in providing legal counsel to those handling and resolving sexual harassment allegations; and

- Internal Ombudsman to understand the Internal Ombudsman's role when an employee contacts the Internal Ombudsman regarding a sexual harassment allegation.

We considered the following recent GAO reviews while conducting our evaluation:

- GAO Report, *Sexual Assault – Actions Needed to Improve Department of Defense's Prevention Strategy and Help Ensure It Is Effectively Implemented* (GAO-16-61) (November 2015);
- GAO Report, *Consumer Financial Protection Bureau – Additional Actions Needed to Support a Fair and Inclusive Workplace* (GAO-16-62) (May 2016);
- GAO Report, *Sexual Violence Data – Actions Needed to Improve Clarity and Address Differences Across Federal Data Collection Efforts* (GAO-16-546) (July 2016);

- GAO Report, *Military Personnel – Department of Defense Has Processes for Operating and Managing Its Sexual Assault Incident Database* (GAO-17-99) (January 2017);
- GAO Report, *Sexual Assault – Better Resource Management Needed to Improve Prevention and Response in the Army National Guard and Army Reserve* (GAO-17-217) (February 2017);
- GAO Report, *Federal Emergency Management Agency – Additional Actions Needed to Improve Handling of Employee Misconduct Allegations* (GAO-17-613) (July 2017);
- GAO Report, *Sexual Violence – Actions Needed to Improve Department of Defense's Efforts to Address the Continuum of Unwanted Sexual Behaviors* (GAO-18-33) (December 2017); and
- GAO Report, *Federal Employee Misconduct – Actions Needed to Ensure Agencies Have Tools to Effectively Address Misconduct* (GAO-18-48) (July 2018).

We reviewed information from the *2016 Merit Principles Survey* conducted by the United States MSPB regarding incidents of FDIC and Government-wide employees experiencing sexual harassment.

We reviewed the sufficiency and frequency of FDIC training for employees and supervisors on how to prevent, identify, report, and respond to sexual harassment.

FDIC Employee Survey Methodology

We conducted a survey of FDIC employees to gain insights about employees' experiences with, and reporting of, sexual harassment at the FDIC, and to understand FDIC employee views regarding the existing resources available for reporting sexual harassment. We interviewed professionals in survey design from GAO to obtain information and guidance on developing and administering employee surveys. The FDIC Division of Information Technology (DIT) provided the listing of employees downloaded from the FDIC global directory of active users as of March 20, 2019. We also worked with DIT to use the FDIC-approved Qualtrics application to conduct the survey. On March 27, 2019, we sent the voluntary survey to 5,927 FDIC employees. On April 19, 2019, the OIG closed the survey with responses received from 2,376 of 5,927 FDIC employees, reflecting a 40 percent response rate.[42] The respondents were diverse – 48 percent women, 46 percent men, and 6 percent who did not specify gender.

[42] We did not perform steps to assess the statistical reliability of the survey results. Throughout this report, we summarize the actual responses received, and do not project the survey results to the total population of FDIC employees.

Identifying the Population of Allegations

Because the FDIC did not have a centralized database that tracked all reported sexual harassment allegations, we attempted to identify the population of sexual harassment allegations from January 2015 through June 2018 from available OMWI and DOA records. OMWI had detailed records related to two allegations of sexual harassment. To identify DOA-handled sexual harassment allegations, we reviewed all available harassment allegation tracking records from DOA Headquarters for indications of sexual harassment. We also interviewed DOA personnel to identify any other sexual harassment allegations not readily identifiable in the tracking records. From those records and interviews, we identified seven sexual harassment allegations, for a total of nine allegations (two from OMWI and seven from DOA) that we reviewed in detail.

Subsequent to June 2018, and before our survey cut-off date of April 19, 2019, we identified that the FDIC had received an additional three sexual harassment allegations. One allegation was processed by OMWI and two were processed by DOA. We did not review these three additional allegations in detail.

Review Methodology

To assess the FDIC's handling and resolving of the nine allegations, we:

- Reviewed the adequacy of OMWI's tracking spreadsheets of EEO complaints;

- Reviewed the sufficiency of EEO complaint file documentation, including the EEO Counselor's Report,[43] the Notice of Right to File a Formal Discrimination Complaint, correspondence between the OMWI EEO Specialist and the complainant, the OMWI EEO Specialist's approval of the investigative plan, signed affidavits from the complainant and any witnesses, and the Report of Investigation prepared by the independent investigative firm;

- Reviewed the adequacy of DOA's tracking spreadsheet of harassment allegations; and

- Reviewed the sufficiency of DOA complaint file documentation, including interviews of complainants, alleged harassers, and any witnesses; evidence related to the complaints; the Reports of Investigation prepared by the DOA HR Specialist (LERS); and notices to complainants and accused upon completion of investigation.

[43] The OMWI EEO Counselor's Report is prepared by an OMWI EEO Specialist.

Appendix 2 Acronyms and Abbreviations

AHPC	Anti-Harassment Program Coordinator
C.F.R.	Code of Federal Regulations
DIT	Division of Information Technology
DOA	Division of Administration
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FDIC	Federal Deposit Insurance Corporation
GAO	Government Accountability Office
HR	Human Resources
LEAS	Labor, Employment, and Administration Section
LERS	Labor and Employee Relations Section
MSPB	Merit Systems Protection Board
NO FEAR	Notification and Federal Employee Antidiscrimination and Retaliation
OIG	Office of Inspector General
OMWI	Office of Minority and Women Inclusion
OPM	Office of Personnel Management
PSB	Personnel Services Branch
ROI	Report of Investigation
U.S.C.	United States Code

FDIC
Federal Deposit Insurance Corporation
3501 Fairfax Drive, Arlington, VA 22226

DATE: June 16, 2020

MEMORANDUM TO: Terry L. Gibson
Assistant Inspector General for Program Audits and Evaluations
Office of Inspector General

FROM: Arleas Upton Kea **/Signed/**
Deputy to the Chairman and Chief Operating Officer

SUBJECT: Management Response to the OIG Draft Report, *Preventing and Addressing Sexual Harassment* (Assignment No. 2018-014)

The FDIC appreciates the opportunity to comment on the Office of Inspector General's (OIG) draft evaluation report titled, *Preventing and Addressing Sexual Harassment*, issued on May 22, 2020. This memorandum also includes our planned actions to address the report recommendations.

Introduction

To fulfill its mission to maintain stability and public confidence in the nation's financial system, the FDIC is guided by six core values:

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

In accordance with these values, the FDIC places a premium on ensuring that its employees can work in a diverse, inclusive environment free of harassment. Such an environment allows employees to reach their highest potential, and to provide the highest quality service for the American public.

The FDIC has a robust anti-harassment program. As the OIG notes in its report, in the Merit Systems Protection Board's (MSPB) 2016 survey of 24 Federal agencies, nine percent of FDIC employees reported experiencing sexual harassment, well below the government average. Although the FDIC endeavors to lower this number to zero, the FDIC had one of the lowest percentage of employees experiencing sexual harassment amongst the agencies surveyed.

The FDIC appreciates the OIG's observations and is committed to improving awareness of its anti-harassment program, eliminating barriers that could dissuade reporting, educating FDIC managers about their roles and duties, completing misconduct investigations promptly and effectively, and taking appropriate disciplinary action. We recognize that improvements can always be made to the program, and plan to adopt the OIG's recommendations for doing so. As detailed below, however, we respectfully disagree with the OIG's conclusion that the FDIC's Anti-Harassment Program is "inadequate."

The FDIC Demonstrates Leadership and Accountability in its Anti-Harassment Program.

According to the Equal Employment Opportunity Commission (EEOC), the cornerstone of a successful harassment prevention strategy is the consistent and demonstrated commitment of senior leaders to create and maintain a culture in which harassment is not tolerated. At the FDIC, the commitment to a workplace free of harassment emanates from the highest levels of agency management. On at least an annual basis, the Chairman affirms unequivocally to all FDIC employees that harassment will not be tolerated in the agency, and reminds managers and supervisors of their obligation to address allegations of harassment expeditiously and appropriately. In addition, the Chairman makes clear that retaliation against individuals for participating in the EEO process, or for otherwise opposing discriminatory practices, is strictly prohibited. These principles are documented in the FDIC's Anti-Harassment Program directive.

Our FDIC Performance Goals ("FPGs") further demonstrate the importance that we place on accountability. Specifically, the FDIC strives to "promote and develop a diverse and engaged workforce with the knowledge, skills, and authority to effectively execute the mission of the FDIC." FPG 2.08. We seek to "enhance corporate-wide awareness and knowledge of the FDIC's commitment to diversity, inclusion and the fair and consistent treatment of all employees." FPG 2.08(e). One of OMWI's milestones under FPG 2.08(e) is to develop proactive initiatives on the Anti-Harassment Program to enhance the policy, create awareness, and train employees and managers and supervisors on all forms of harassment, including sexual harassment.

As such, we respectfully disagree with the OIG's conclusion that the FDIC had not established a strategy for maintaining a culture where harassment is not tolerated and is promptly addressed. We contend that FDIC leadership is intensely committed to, and engaged in maintaining, a harassment-free workplace. The FDIC demonstrates this leadership commitment in multiple ways. As acknowledged in the OIG's draft report, the FDIC Chairman has committed to a discrimination-free workplace and issues annual notices informing employees that the FDIC does not tolerate discrimination or harassment in any form. The FDIC also has a Diversity and Inclusion Executive Advisory Council with division and office director-level

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membership that meets monthly to support the Chairman's goal to promote a culture of diversity and inclusion at the FDIC in accordance with law and the FDIC's mission. In addition, the FDIC's *Diversity and Inclusion Strategic Plan* establishes the FDIC's diversity and inclusion strategy. The 2018-2019 plan included an action item related to providing training on the prevention of unlawful discrimination, retaliation, and harassment. Lastly, as previously noted, the FDIC has established FPGs to enhance Corporate awareness of the FDIC's commitment to fair and consistent treatment of all employees, and OMWI has developed milestones related specifically to Anti-Harassment Program enhancements.

Consistent with EEOC's *Promising Practices*, the FDIC further demonstrates its leadership commitment by incorporating harassment and discrimination policies into FDIC operations, allocating sufficient resources and staff time for effective harassment prevention strategies, providing appropriate authority to individuals responsible for the Anti-Harassment Program and the EEO program, and engaging organizational leadership in harassment prevention and correction efforts. EEOC's *Promising Practices* also includes management's commitment to maintaining comprehensive harassment policy, accessible complaint systems, and regular and effective training for employees and supervisors. Although the FDIC's current practices meet EEOC guidelines, the FDIC's senior management continually seeks to improve our efforts to prevent discrimination and harassment.

The FDIC Has a Strong and Comprehensive Anti-Harassment Program.

The OIG's characterization of the FDIC's current anti-harassment program as inadequate does not sufficiently reflect fundamental program elements that the FDIC has in place. The FDIC's program comports with the EEOC's regulations on sexual harassment. These regulations encourage employers to "take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned." 29 C.F.R. § 1614.11(f). The FDIC has taken those steps as part of its prevention program. Notably, the OIG has not concluded otherwise.

As a supplement to its regulations, the EEOC has noted that having a strong and comprehensive anti-harassment policy can assist an organization in preventing and responding to workplace harassment. Specifically, the EEOC identified 16 "best practices" that an agency's anti-harassment policy should include. Although these practices are not legal requirements under Federal anti-discrimination laws, they may enhance an organization's compliance efforts. Our current policy is in full compliance with 13 of the 16 "best practices" enumerated by the EEOC. For example, the FDIC prohibits all forms of harassment, including sexual harassment. Although harassment is only deemed illegal by the EEOC if it is "severe or pervasive," the FDIC's policy is more comprehensive, and is designed to prevent (and, where circumstances warrant, address) harassing behavior before such behavior rises to the level of a violation of Title VII or other civil rights laws.

Because the scope of the FDIC's Anti-Harassment Program is broader than just sexual harassment, it is important that, in modifying policies, procedures, and training, we not focus exclusively on sexual harassment. Treating sexual harassment as a stand-alone issue could, in some circumstances, confuse employees and managers into believing that it is the only form of objectionable workplace harassment, or that other forms of harassment (e.g., race, national origin or religious harassment) are in some way less important concerns.

The FDIC intends to make the necessary changes (e.g., updating the telephone number for the Anti-Harassment Program Coordinator) to ensure that its Anti-Harassment Program fully comports with the EEOC's remaining three "best practices." However, in light of the fact that the FDIC's current policy is wholly consistent with the government-wide regulations, and, with minor exception, is fully compliant with the "best practices" outlined by the EEOC, the FDIC, again, respectfully disagrees with the OIG's conclusion that the FDIC's program is "inadequate."

We also respectfully disagree with the OIG's suggestion that the FDIC's Anti-Harassment Program does not provide FDIC employees with a clear explanation of prohibited conduct. As the OIG notes in its report, there is no statutory definition of "sexual harassment" and the standards developed by the courts and the EEOC are not easily understandable by those not familiar with EEO laws. Consequently, the Anti-Harassment Program describes the types of conduct that would constitute harassment to better assist all of its employees to understand the nature of behavior deemed inappropriate by the FDIC. Moreover, in accordance with EEOC guidance, the FDIC did not rely solely on legal standards to define harassment in its policies because the FDIC prohibits harassment even if the nature of the harassing conduct is not illegal under Title VII or other civil rights laws, rules, or regulations. Such behavior is anathema to an inclusive workplace, and the FDIC believes strongly that it must address any such behavior even if it does not rise to the level of harassment that would be actionable by the EEOC.

The OIG suggests that the FDIC's Anti-Harassment Program is deficient because only a relatively small percentage of those individuals who reported experiencing sexual harassment at the FDIC actually pursued these allegations under the FDIC's Anti-Harassment Program. However, there are multiple reasons why employees opt not to utilize an agency's anti-harassment program, and an employee's failure to do so is not necessarily due to a deficiency in the program itself.

For example, much like the FDIC employees surveyed, fear of retaliation is a common reason given by employees throughout the Federal government for not reporting incidents of harassment. The FDIC has made clear that retaliation against those that report allegations of harassment is strictly prohibited and we will continue to emphasize our unwavering commitment in this regard. However, as the government-wide data reflects, some employees will always be reluctant to raise such allegations for fear of retaliation.

In addition, in lieu of raising harassment allegations through an agency's anti-harassment program, many employees bring such allegations to their supervisors so that they can be addressed through less formal means. The EEOC's Select Task Force on the Study of Harassment in the Workplace cites two studies that found that approximately 30% of individuals

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who experienced harassment talked with a supervisor, manager, or union representative, instead of pursuing the allegations through the agency's formal program. Resolving issues in this manner should be encouraged and reflects positively on the FDIC's commitment to addressing allegations of harassment expeditiously. Yet, the OIG's report ignores the possibility that an employee's desire to address these issues in a more informal way may be a basis for the potential under-utilization of the Anti-Harassment Program.

In addition, we believe it is important to clarify the OIG's recommendation that the FDIC ensure proportionate corrective action when harassment is substantiated. The Division of Administration's Labor and Employee Relations Section (LERS) and the Legal Division's Labor, Employment and Administration Section (LEAS), the offices responsible for advising management on employee discipline, generally advise managers not to characterize misconduct as "harassment" when proposing discipline. To take disciplinary action against an employee, an agency must prove the "charge" that it ascribes to the employee's misconduct (e.g., absence without leave, failure to follow instructions, etc.). If an employee is charged with "harassment," an agency must prove that the employee's actions rise to the level of harassment prohibited under Title VII or other civil rights laws. Otherwise, the charge fails, and the employee cannot be disciplined. Thus, for reasons both legal and strategic, even if an employee engages in conduct that might be considered "harassment" under the FDIC's Anti-Harassment Program, we might recommend that a manager label the charge as something other than "harassment" (e.g., inappropriate conduct).

Significantly, however, regardless of the way a charge of misconduct is framed, in determining the appropriate penalty for an instance of misconduct, FDIC management must consider the same factors. These factors include the significance/severity of the conduct, the degree of trust that agency management has in the employee in light of the misconduct, and whether the individual was on notice of the rules prohibiting such misconduct. So, it is the nature of the misconduct, not the way in which a charge is labeled, that drives the decision on the appropriateness of a penalty. LERS and LEAS advise managers to ensure that penalties for similar conduct are generally consistent with one another, regardless of how the misconduct is labeled. This concept is already embedded in the FDIC's Disciplinary and Adverse Action directive and, although we agree that this directive needs to be updated, we believe that the FDIC's procedures for administering disciplinary action are adequate.

The FDIC Provides Training on its Anti-Harassment Program to its Employees.

The effectiveness of any anti-harassment program is contingent on ensuring that employees are aware of it. To this end, the FDIC appreciates the importance of offering regular, interactive, comprehensive training for all employees to ensure that the workforce understands organizational rules, policies, procedures, and expectations, as well as the consequences of misconduct. The OIG notes that a percentage of survey participants did not recall having received specific "sexual harassment training." That may be because the FDIC did not label and deliver such training in a stand-alone manner; rather, the FDIC's sexual harassment training is part of its broader anti-discrimination and anti-harassment program. However, based on the OIG's recommendations, management will take a fresh look at our training regimen to ensure

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that it is comprehensive.

FDIC Planned Management Actions in Response to the Report Recommendations

OIG made 15 recommendations in its May 22, 2020 draft report. Our management decision, planned action, and estimated completion date for each recommendation follows.

Recommendations

1. **Develop and implement a strategy for acknowledging employees, supervisors, and managers, as appropriate, for creating and maintaining a culture in which harassment is not tolerated and promptly reporting, investigating, and resolving harassment complaints.**

   Partially Concur with Alternate Action.

   Planned Action

   The OIG report focuses on one element of the EEOC's *Promising Practices* to support its conclusion that the FDIC has not developed a strategy; specifically, the use of employee performance reviews or rewards to acknowledge employees' and managers' roles in making the workplace harassment-free. As detailed previously, the FDIC has a comprehensive strategy for promoting an environment that champions diversity and inclusion, and for cultivating a culture in which harassment is not tolerated. Moreover, although we have performance criteria in place to hold employees and supervisors accountable for maintaining such an environment in the workplace, we are amenable to refining such performance plans to further demonstrate the FDIC's commitment in this regard.

   The FDIC has an established process for reviewing FDIC employee and supervisor performance. The Performance Management Program (PMP) for employees and supervisors[1] are important tools in holding supervisors and employees accountable for their actions at the FDIC. The PMP program is designed to focus on rewarding employee performance not simply based upon outcomes, but how those outcomes are achieved. For example, under the PMP, every FDIC employee is assessed under the job standard of "teamwork and collaboration." This metric evaluates each employee on whether he/she "works cooperatively with and involves others within and/or beyond the immediate work group, including those with varied background and perspectives," and "respects and values individual differences and diversity and treats others fairly and professionally." The current and planned performance management systems already take into account employee and supervisor performance standards in accordance with the FDIC culture and the six core values.

[1] The FDIC adopted its new PMP for non-management employees as part of its 2020-22 compensation agreement with the National Treasury Employees Union. As of the writing of this response the FDIC is still finalizing its performance management program for supervisors. However, the FDIC will ensure that it retains the components of the current system that hold managers and supervisors accountable for supporting a harassment-free workplace.

Management recognizes and agrees with the EEOC's principle of "committed and engaged leadership" and intends to continue its practice of issuing FDIC-wide emails and of reviewing and updating its *Diversity and Inclusion Strategic Plan* on a regular basis. In addition, as detailed below, management will update its Directives on Anti-Harassment and Disciplinary and Adverse Actions, and enhance training on the subject of sexual harassment.

In short, the recommendation suggests that the FDIC develop a formal "strategy" to promote a harassment-free workplace. The FDIC disagrees that developing a new strategy is required because, as detailed previously in this response, the FDIC currently has a robust, multi-faceted strategy in place designed to promote a culture of diversity, inclusivity, and an environment in which harassment is not tolerated. However, we are always looking for ways to bolster the framework we have in place, and we agree that refinements to our strategy would be helpful to strengthening this structure. Thus, we will expand upon current requirements in our supervisory performance management system and implement other recommendations in the OIG's report. We believe these actions will address the concerns raised by the OIG that underlie this recommendation.

Estimated Completion Date

The FDIC intends to update its supervisory performance management system by August 31, 2020, to retain and bolster existing standards that hold supervisors accountable for supporting a harassment-free workplace. The FDIC intends to update its Directives on Anti-Harassment and Disciplinary and Adverse Actions by January 31, 2021.

2. **Define in FDIC policy the terminology involving sexual harassment and ensure that it includes the EEOC definition.**

Management Decision

Concur.

Planned Action

Management will update its Anti-Harassment Program Directive and define terminology involving sexual harassment, including the EEOC definition. However, the FDIC's Directive will continue to prohibit conduct that may not meet the EEOC's definition of harassment, but is nonetheless inappropriate.

Estimated Completion Date

The FDIC intends to issue its revised Anti-Harassment Program Directive by January 31, 2021.

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3. **Specify within FDIC policy that HR Specialists (LERS) are avenues for employees to report sexual harassment and correct the contact information for the Anti-Harassment Program Coordinator.**

   Management Decision

   Concur.

   Planned Action

   Management will update its Anti-Harassment Program Directive to include HR Specialists (LERS) as points of contact to report sexual harassment, and correct contact information for the Anti-Harassment Program Coordinator.

   Estimated Completion Date

   The FDIC intends to issue its revised Anti-Harassment Program Directive by January 31, 2021. In addition, we will send a global communication by August 31, 2020, that contains the updated contact information for the Anti-Harassment Program Coordinator.

4. **Clearly identify in FDIC policy the Anti-Harassment Program Coordinator roles and responsibilities with respect to sexual harassment allegations.**

   Management Decision

   Concur.

   Planned Action

   Management will update its Anti-Harassment Program Directive to clearly identify the Anti-Harassment Program Coordinator roles and responsibilities with respect to sexual harassment allegations.

   Estimated Completion Date

   The FDIC intends to issue its revised Anti-Harassment Program Directive by January 31, 2021.

5. **Include requirements in FDIC policy for proportionate corrective action (discipline) when harassment is substantiated.**

   Management Decision

   Partially Concur with Alternate Action.

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Planned Action

Management will update its Disciplinary and Adverse Actions Directive to ensure that it includes requirements for corrective action for misconduct. Management does not believe it is appropriate to require "consistent" disciplinary actions for "substantiated" sexual harassment for multiple reasons: (1) as noted in the OIG report, harassment may be charged in several different ways; (2) the disciplinary system in the Federal government requires consideration of several different factors in any particular case, and the type of misconduct is only one factor; and (3) the FDIC will take appropriate disciplinary action for any misconduct regardless of whether a particular claim of harassment is ultimately "substantiated" through the EEO process.

Estimated Completion Date

The FDIC intends to issue its revised Disciplinary and Adverse Actions Directive by January 31, 2021.

6. **Incorporate in FDIC policy options of alternative disciplinary action.**

Management Decision

Concur.

Planned Action

Management will update its Disciplinary and Adverse Actions Directive and include options for alternative discipline.

Estimated Completion Date

The FDIC intends to issue its revised Disciplinary and Adverse Actions Directive by January 31, 2021.

7. **Include in FDIC policy Legal Division responsibilities.**

Management Decision

Concur.

Planned Action

Management will update its Anti-Harassment Program and Disciplinary and Adverse Actions Directives and include Legal Division responsibilities.

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Estimated Completion Date

The FDIC intends to issue its revised Anti-Harassment Program Directive and its revised Disciplinary and Adverse Actions Directive by January 31, 2021. In addition, on May 19, 2020, the Legal Division and the Division of Administration entered into a Memorandum of Understanding (MOU) setting forth each Division's respective responsibilities in relation to investigations. We have separately provided a copy of the MOU to the OIG.

8. **Develop 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.**

Management Decision

Concur.

Planned Action

Management will implement a new case management system, which will include tracking allegations of sexual harassment made under the Anti-Harassment Program Directive.

Estimated Completion Date

The FDIC intends to implement its new case management system by January 31, 2021.

9. **Track data elements for misconduct allegations including original allegation date; misconduct classification; date investigation concluded; name of investigator; name 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.**

Management Decision

Concur.

Planned Action

Management will implement a new case management system, which will contain the information recommended by the OIG for each matter.

Estimated Completion Date

The FDIC intends to implement its new case management system by May 31, 2021.

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10. Develop and implement procedures for investigating sexual harassment misconduct allegations.

Management Decision

Concur.

Planned Action

Management will create a Standard Operating Procedure document (SOP) that sets forth procedures for investigating allegations of misconduct, including sexual harassment.

Estimated Completion Date

The FDIC intends to finalize its SOP by December 31, 2020.

11. Ensure 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.

Management Decision

Concur.

Planned Action

LERS (or LEAS or OMWI, as appropriate) will notify the complainant and alleged harasser that the investigation has been completed, consistent with the Privacy Act and other legal requirements, and retain such written notifications.

Estimated Completion Date

The FDIC intends to take these actions by July 31, 2020.

12. Develop and implement procedures to ensure that supervisors take consistent disciplinary actions for substantiated sexual harassment, in line with Federal government law on imposing disciplinary actions

Management Decision

Partially Concur with Alternate Action.

11

Planned Action

Management will update its Disciplinary and Adverse Actions Directive to ensure that it includes requirements for corrective action for misconduct. As detailed previously in this response, management does not believe it is appropriate to require "consistent" disciplinary actions for "substantiated" sexual harassment for multiple reasons: (1) as noted in the OIG report, harassment may be charged in several different ways; (2) the disciplinary system in the Federal government requires consideration of several different factors in any particular case, and the type of misconduct is only one factor; and (3) the FDIC will take appropriate disciplinary action for any misconduct regardless of whether a particular claim of harassment is ultimately "substantiated" through the EEO process.

Estimated Completion Date

The FDIC intends to issue its revised Disciplinary and Adverse Actions Directive by January 31, 2021.

13. Develop and implement a comprehensive centralized database of disciplinary actions, including those associated with sexual harassment.

Management Decision

Concur.

Planned Action

Management will implement a new case management system, which will include a centralized database of disciplinary actions, including those associated with sexual harassment.

Estimated Completion Date

The new case management system should be fully implemented by January 31, 2021.

14. Enhance employee and supervisor training on identifying and reporting sexual harassment, to include the training content recommended by the EEOC.

Management Decision

Concur.

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Planned Action

OMWI will with work LERS and LEAS to develop and implement employee and supervisor training, which will include identifying and reporting sexual harassment, including training content recommended by the EEOC.

Estimated Completion Date

The FDIC will begin delivering the new training by January 31, 2021.

15. Develop oversight mechanisms to assess the effectiveness of the FDIC's sexual harassment prevention efforts and determine whether the FDIC is addressing sexual harassment allegations in a prompt and effective manner.

Management Decision

Concur.

Planned Action

OMWI, LERS, and LEAS will collaborate to develop appropriate oversight mechanisms (mechanisms may include metrics related to case processing and harassment allegation trends, climate surveys, internal reviews, or benchmarking) to measure the effectiveness of the FDIC's Anti-Harassment Program.

Estimated Completion Date

The FDIC will develop the mechanisms by May 31, 2021.

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Summary of the FDIC's Corrective Actions

This table presents management's response to the recommendations in the report and the status of the recommendations as of the date of report issuance.

Rec. No.	Corrective Action: Taken or Planned	Expected Completion Date	Monetary Benefits	Resolved:[a] Yes or No	Open or Closed[b]
1	Management will expand upon current requirements in its supervisory performance management system and will update its Directives on Anti-Harassment and Disciplinary and Adverse Actions.	January 31, 2021	$0	Yes	Open
2	Management will update its Anti-Harassment Program Directive and define terminology involving sexual harassment, including the EEOC definition.	January 31, 2021	$0	Yes	Open
3	Management will update its Anti-Harassment Program Directive to include HR Specialists (LERS) as points of contact to report sexual harassment, and correct contact information for the Anti-Harassment Program Coordinator.	January 31, 2021	$0	Yes	Open
4	Management will update its Anti-Harassment Program Directive to clearly identify the Anti-Harassment Program Coordinator roles and responsibilities with respect to sexual harassment allegations.	January 31, 2021	$0	Yes	Open
5	Management will update its Disciplinary and Adverse Actions Directive to ensure that it includes requirements for corrective action for misconduct.	January 31, 2021	$0	No	Open
6	Management will update its Disciplinary and Adverse Actions Directive and include options for alternative discipline.	January 31, 2021	$0	Yes	Open
7	On May 19, 2020, the Legal Division and the Division of Administration entered into a Memorandum of Understanding (MOU) setting forth each Division's respective responsibilities in relation to investigations. Management will update its Anti-Harassment Program and Disciplinary and Adverse Actions Directives and include Legal Division responsibilities.	January 31, 2021	$0	Yes	Open

Rec. No.	Corrective Action: Taken or Planned	Expected Completion Date	Monetary Benefits	Resolved:[a] Yes or No	Open or Closed[b]
8	Management will implement a new case management system, which will include tracking allegations of sexual harassment made under the Anti-Harassment Program Directive.	January 31, 2021	$0	Yes	Open
9	Management will implement a new case management system, which will contain the information recommended by the OIG for each matter.	May 31, 2021	$0	Yes	Open
10	Management will create a Standard Operating Procedure document (SOP) that sets forth procedures for investigating allegations of misconduct, including sexual harassment.	December 31, 2020	$0	Yes	Open
11	LERS (or LEAS or OMWI, as appropriate) will notify the complainant and alleged harasser that the investigation has been completed, consistent with the Privacy Act and other legal requirements, and retain such written notifications.	July 31, 2020	$0	Yes	Open
12	Management will update its Disciplinary and Adverse Actions Directive to ensure that it includes requirements for corrective action for misconduct.	January 31, 2021	$0	No	Open
13	Management will implement a new case management system, which will include a centralized database of disciplinary actions, including those associated with sexual harassment.	January 31, 2021	$0	Yes	Open
14	OMWI will with work LERS and LEAS to develop and implement employee and supervisor training, which will include identifying and reporting sexual harassment, including training content recommended by the EEOC.	January 31, 2021	$0	Yes	Open
15	OMWI, LERS, and LEAS will collaborate to develop appropriate oversight mechanisms (mechanisms may include metrics related to case processing and harassment allegation trends, climate surveys, internal reviews, or benchmarking) to measure the effectiveness of the FDIC's Anti-Harassment Program.	May 31, 2021	$0	Yes	Open

[a] Recommendations are resolved when —

1. Management concurs with the recommendation, and the planned, ongoing, and completed corrective action is consistent with the recommendation.
2. Management does not concur with the recommendation, but alternative action meets the intent of the recommendation.
3. Management agrees to the OIG monetary benefits, or a different amount, or no ($0) amount. Monetary benefits are considered resolved as long as management provides an amount.

[b] Recommendations will be closed when the OIG confirms that corrective actions have been completed and are responsive.

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