STATEMENT BY

JONATHAN MCKERNAN
MEMBER OF THE BOARD OF DIRECTORS OF THE
FEDERAL DEPOSIT INSURANCE CORPORATION

on

"Oversight of the FDIC's Failed Leadership and Toxic Workplace Culture"

before the

COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

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2128 Rayburn Office Building
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Chairman McHenry, Ranking Member Waters, and Members of the Committee, I am here as a co-chair of the Special Review Committee that oversaw Cleary Gottlieb's review of the FDIC's workplace culture.

To the FDIC employees who might be watching today: Cleary's report establishes that you have been heard. The report makes clear that what happened to you was real and totally unacceptable. I hope the report puts us on a path to change. I hope also accountability—actual accountability—won't be too far off.

I'd like also to convey my respects and appreciation to Director Hsu for the constructive and non-partisan way in which he approached the review. I think this review was a good example of how the FDIC Board can and should work.

In my year and a half at the FDIC, I have developed a strong attachment to the FDIC's staff and our shared mission. Overseeing the review, I learned of a different side to the FDIC.

That was a jarring experience. I know most had a similar experience reading Cleary's report.

Cleary's report is a painful read. The report documents sexual harassment and other misconduct at the FDIC of a scale and nature that shock the conscience.[1] The report describes a "good ol' boys" club that is "patriarchal" and "misogynistic."[2]

The report makes clear there has been a widespread and credible fear of retaliation that deters victims from reporting misconduct.[3] The report also makes clear that there has been a failure to hold wrongdoers accountable when actually reported.[4]

The report describes how these dynamics compound upon each other, fueling a cycle of deepening fear and distrust among employees, especially women and underrepresented groups.

It is also the case that almost all of the FDIC's staff are good people, solid public servants, deeply committed to a mission that is central to the success of our country.

Reconciling that with the Cleary report comes down to a question of leadership.

An organization can prioritize protecting employees. It can strive to root out wrongdoers and make an example of them.

Or an organization can prioritize protecting itself. It can strive to brush wrongdoers under the rug, move them around or even promote them, all with an aim of avoiding the bad publicity, litigation, time, and expense of disciplining wrongdoers.

The FDIC too often chooses the second path. That choice isn't driven by policies, procedures, or training. That choice is driven by values. And values are set by our leaders.

Thank you, and I look forward to your questions.

[1] “Over 500 individuals bravely reported into our hotline, often painfully and emotionally recounting experiences of sexual harassment, discrimination, and other interpersonal misconduct that they have suffered at the FDIC.” Cleary Report at 1. “97 individuals reported 145 separate incidents of sexual assaults, unwelcome sexual advances, unwanted touching and attention, and other verbal and physical conduct of a sexual nature, as well as the pursuit of romantic relationships with subordinates; 91 additional individuals reported 141 separate incidents of gender or sexuality-based discrimination that did not fall into the sexual harassment-related categories above; 187 individuals reported 320 separate incidents of workplace bullying, threats, and other verbal abuse; and 191 individuals reported 295 separate incidents of other forms of discrimination . . . .” *Id.* at 115. The sheer number of the reports is all the more shocking if one acknowledges that these 500+ reports are only a fraction of the incidents of misconduct at the FDIC. Victims are understandably reluctant to relive the sexual harassment and other misconduct they suffered; there were practical difficulties in soliciting reports from former FDIC employees; and FDIC employees widely feared retaliation even in reporting to the hotline. *See Id.* at 13 n. 42 (“A number of former employees we reached out to did not respond and others noted that they would prefer not to speak to us out of concern that their current professional circumstances might be negatively impacted.”); *id.* at 4 (“That this much fear exists, even in reporting anonymously to an independent law firm, indicates that there are likely many others who have not reported and remain fearful of reporting misconduct they have experienced at the FDIC.”).

[2] “These incidents, and many others like them, did not occur in a vacuum. They arose within a workplace culture that is ‘misogynistic,’ ‘patriarchal,’ ‘insular,’ and ‘outdated’—a ‘good ol’ boys’ club where favoritism is common, wagons are circled around managers, and senior executives with well-known reputations for pursuing romantic relations with subordinates enjoy long careers without any apparent consequence.” *Id.* at 2.

[3] “[F]ear of retaliation at the FDIC remains real and widespread.” *Id.* at 4. One root cause of the workplace culture issues is “[a] deep-seated and credible fear of retaliation that has prevented employees from raising and reporting issues of workplace misconduct internally.” *Id.* at 4; *see also id.* at 147 (“[O]ne of the most prevalent and consistently reported concerns expressed by FDIC employees was fear of retaliation.”). FDIC employees have said that “when complaints are made, managers ‘close ranks’ and work to protect themselves instead of taking concerns seriously.” *Id.* at 99. Following this “circling of the wagons,” “forms of retaliation people fear ranged from being made to travel or travel more often, receiving bad evaluations, to getting reassigned or having bonuses withheld, to failing to be promoted or being fired, or management would simply ‘mak[e] your life miserable.’” *Id.* at 100 (footnotes omitted; alteration in original). An employee who filed a complaint was told by her supervisor “[y]ou dug your own grave, and now you need to lay in it. . . I’m done with you.” *Id.* at 147 (alterations in the original). As another employee put it, “[e]veryone knew if you spoke out you would get a bullseye on [your] back.” *Id.* at 147.

[4] Another root cause of the workplace culture issues is “[a] failure over time to hold wrongdoers accountable in a way that is transparent to employees, with wrongdoers being moved around, even promoted, and not disciplined in any meaningful or perceivable way.” *Id.* at 4; *see also id.* at 145 (“The FDIC suffers from a failure to hold employees accountable for misconduct . . . as well as a widespread perception within the agency that wrongdoers are not held to account.”). Of the 92 harassment complaints made through the FDIC’s Anti-Harassment Program from 2015 to 2023, none resulted in a removal or reduction in grade or pay. *Id.* at 3. Only two resulted in suspensions, and only two resulted in letters of reprimand. *Id.* Twelve resulted in other slaps on the wrist (e.g., counseling, warnings, or trainings). *See id.* The remaining 76 led to no discipline at all. *Id.* Executives and managers with well-known reputations for misconduct and romantic relationships with subordinates have enjoyed promotions and long careers without consequence. *Id.* at 145 (“[O]ur review has revealed a number of examples over the years of FDIC managers who had been involved in interpersonal misconduct with impunity . . . .”); *id.* (“[T]here have been a number of FDIC executives, including former Regional Directors, who had well-known reputations for pursuing and having relationships with FDIC employees, including subordinates, but went on to long careers within the FDIC, moving around and rising to senior levels without consequence.”). As an executive explained, wrongdoers can expect that the FDIC will simply “pay, promote, or move them.” *Id.* at 2–3; *see also id.* at 145 (“Indeed, a number of these individuals were promoted and moved among different divisions and regions, creating the impression that workplace misconduct is not only condoned, but allowed to spread around the organization.”). “This actual and perceived failure to hold individuals accountable has had a number of negative consequences, including a view among employees that certain types of misconduct is condoned and that there is no point (especially when weighed against the risks) in reporting bad behavior.” *Id.* at 145; *see also id.* at 147 (“When an organization does not firmly and consistently hold those involved in workplace misconduct accountable, it undermines the culture, sows doubt in the integrity of its processes, and stifles the reporting of misconduct that is a necessary part of improving workplace culture.”). That in turn leads to less reporting, “creating a cycle of even less accountability.” *Id.* at 145.

Joint Statement of
FDIC Board Members Michael J. Hsu and Jonathan McKernan
before the
Committee on Financial Services
U.S. House of Representatives
June 12, 2024

Chairman McHenry, Ranking Member Waters, and Members of the Committee, we are pleased to appear today to discuss the activities of the Special Review Committee of the Federal Deposit Insurance Corporation's (FDIC) Board of Directors (FDIC Board). We are appearing before the Committee in our capacity as members of the FDIC Board and as co-chairs of the Special Review Committee.

In response to alarming public reports of workplace misconduct and sexual harassment, the FDIC Board established the Special Review Committee on November 20, 2023, to retain, oversee, and provide direction to an independent review of the reports and the FDIC's workplace culture. The FDIC Board appointed us as co-chairs of the Special Review Committee. Our north star for the duration of our time as co-chairs was protecting and ensuring the safety of FDIC staff. This remains our paramount concern and objective.

The Special Review Committee's duties and authorities included soliciting a contract for an independent third-party reviewer, providing direction to the contractor and overseeing the review conducted, receiving the report of the third-party reviewer and assessing its sufficiency, and reporting to the full FDIC Board periodically and upon completion of the contractor's work.

To select the third-party reviewer, the FDIC, under the Special Review Committee's direction, solicited 33 law firms, and twenty firms responded. Based on criteria including experience reviewing workplace misconduct matters, conducting internal investigations, and advising a range of organizations, boards, and board committees, the Special Review Committee and staff conducted discussions with nine firms. The discussions explored potential conflicts of each firm in conducting the needed review and proposed fees. Following these discussions, the Special Review Committee selected Cleary Gottlieb Steen & Hamilton (Cleary Gottlieb) to undertake the review. The firm's investigations practice, including the partners who would lead the investigation, specialized in conducting internal investigations for board and board committees of public and private companies and government agencies. The investigation partners had nearly 100 years of combined experience. Cleary Gottlieb could enter into a legal services agreement with the FDIC and was able to commence the review immediately.

To gain better insight into the nature and scope of workplace culture issues at the FDIC, we met with the FDIC's Employee Resource Groups, the National Treasury Employees Union, the FDIC's Internal Ombudsman, and the Executive Committee of the Chairman's Diversity Advisory Council. Partners from Cleary Gottlieb listened to these meetings, and Cleary Gottlieb subsequently met separately with many of these same groups. Our meetings with these groups were powerful and moving. They amplified the nature of the allegations that had been reported and reinforced our focus on the people of the FDIC and ensuring that they could work in a safe workplace, one in which individuals engaged in misconduct are held accountable to the fullest extent.

One of the first actions Cleary Gottlieb took was to establish a hotline (including an email address and telephone number) that current and former FDIC employees could use to report allegations of harassment and interpersonal misconduct at the FDIC. Concerned about their privacy, some FDIC employees requested additional means to report allegations to Cleary Gottlieb, which then established a web-based means for employees to tell their stories. To facilitate reporting, the FDIC waived any confidentiality restrictions that would have otherwise precluded an employee, current or former, from disclosing allegations of harassment or interpersonal misconduct to Cleary Gottlieb. Ultimately, over 500 courageous FDIC employees told their stories through one of the reporting channels.

As co-chairs, we met with the Cleary Gottlieb partners on a weekly basis to receive updates on the progress of the review. The scope of the independent review, well-defined in the FDIC Board resolution establishing the Special Review Committee, was to review allegations of sexual harassment and interpersonal misconduct at the FDIC, including allegations of hostile, abusive, unprofessional, or inappropriate conduct and any FDIC management response thereto, and the FDIC's workplace culture, including any practices that might discourage or otherwise deter the reporting of, or appropriate response to, such misconduct. We did not impose any specific limits on Cleary's review but provided broad support for Cleary to follow the facts and investigate any and all employee reports and allegations.

Drawing on their experience conducting such reviews, the Cleary Gottlieb team developed a draft review management plan. In addition to receiving, managing, and responding to the significant volume of hotline reports, the Cleary Gottlieb team conducted scoping interviews of relevant FDIC divisions; gathered, reviewed, and analyzed relevant FDIC documents and information; and conducted interviews with current and former FDIC employees to discuss allegations of harassment or other misconduct and the FDIC's response, as well as the FDIC's workplace culture. The Special Review Committee co-chairs provided some limited suggestions on the review plan for Cleary Gottlieb's consideration. However to maintain the independence and integrity of the review, the Special Review Committee was clear that the review should be driven, within its defined scope, by the factual findings and Cleary Gottlieb's judgment and experience.

The FDIC Board's resolution establishing the Special Review Committee authorized the co-chairs to appoint up to three additional nonvoting members to promote a diversity of views. We added three distinguished nonvoting members who brought a wealth of executive management and board-level experience across the government and private sector. Cleary Gottlieb provided the nonvoting members with a summary of the review plan and work completed and subsequently provided the full Special Review Committee with status updates.

The Special Review Committee received the first draft of the factual findings, root causes, and recommendations from Cleary Gottlieb in early April. Committee members reviewed the findings, asked questions, and offered feedback. Drawing on their experiences, the nonvoting members provided the co-chairs insightful structural comments and input to strengthen recommendations, which the co-chairs relayed to Cleary Gottlieb.

Cleary Gottlieb delivered the final draft report to the Special Review Committee on April 30. The report summarized Cleary Gottlieb's review, provided a statement of facts, findings, and recommendations to promote a workplace that is free of employee harassment and interpersonal misconduct. In a formal meeting, the Special Review Committee accepted the final report and determined that the report was sufficient as contemplated by its governing document. The Special Review Committee delivered the report to the full FDIC Board later that day. Before the final report (Report) was released publicly, in order to comply with privacy laws and due-process considerations, FDIC staff provided input to Cleary Gottlieb, and Cleary Gottlieb made redactions to the Report. The FDIC Board terminated the Special Review Committee on May 30.

As noted earlier, our singular focus throughout the review was protecting the staff of the FDIC. That continues to be our priority going forward. The harassment and misconduct detailed in the Report are totally unacceptable. The number and scope of allegations, the patterns of misconduct, and the longstanding culture revealed by the review are highly disturbing and urgently need to be fixed. The root causes and recommendations cited in the Report provide a clear roadmap for what needs to be done and why. This is where our attention must be focused to ensure the FDIC is a safe workplace for all of its employees. We are especially supportive of the Report's recommendation to engage an external expert and establish an independent monitor to ensure that the agency's corrective actions are validated and that accountability is enforced. As members of the FDIC Board, we are committed to the transformation called for in the Report to ensure that FDIC employees are safe, and that any employee engaging in misconduct is held accountable.