**STATEMENT BY**

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**on**

**"Oversight of Prudential Regulators"**

**before the**

**COMMITTEE ON FINANCIAL SERVICES**
**UNITED STATES HOUSE OF REPRESENTATIVES**

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Chairman McHenry, Ranking Member Waters, and Members of the Committee, I am pleased to appear at today's hearing entitled "Oversight of Prudential Regulators." I appreciate the opportunity to report on the Federal Deposit Insurance Corporation's (FDIC) recent work in protecting insured deposits and supervising state-chartered banks that are not members of the Federal Reserve system for safety and soundness and consumer protection.

My statement reports on the state of the banking industry and the condition of the FDIC's Deposit Insurance Fund (DIF). Additionally, the statement provides information on several final and proposed rulemakings as well as statements of policy that the FDIC Board has approved since the May oversight hearing.

Notably, in the areas of deposit insurance and consumer protection, the Board has proposed new rules that would strengthen requirements for insured depository institutions (IDI) to maintain timely records of the consumers and businesses with funds in certain custodial deposit accounts opened by third parties. This proposal will help prevent circumstances like those in the Synapse Financial Technologies, Inc (Synapse) bankruptcy,[1] where the banks involved have encountered significant difficulties in returning to consumers and businesses money deposited through the Synapse platform because neither the banks nor their nonbank partners maintained adequate records of the consumer funds deposited in these aggregate custodial accounts by the nonbank companies.

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[1] See, for example, *Abrupt Shutdown of Synapse has Frozen Thousands of Americans' Deposits,* AP News (May 22, 2024); available at https://apnews.com/article/synapse-evolve-bank-fintech-accounts-frozen-07ecb45f807a8114cac7438e7a66b512#:~:text=Synapse%20filed%20for%20Chapter%2011,funds%20not%20existing%20at%20all.

As detailed later in the statement, I am also pleased to report on the progress that the FDIC has made toward reforming its workplace culture and implementing recommendations to create a safe, fair, and inclusive work environment.[2]

## State of the Banking Industry

The banking industry continues to show resilience in 2024 as net income remains relatively high and asset quality metrics remain generally favorable. However, the industry continues to report weakness in several loan portfolios, which we are monitoring closely. The net charge-off rate on loans also remained elevated in the second quarter.

The banking industry's second quarter net income of $71.5 billion was $7.3 billion, or 11.4 percent, higher than the prior quarter. This was mainly due to one-time items such as the absence of an FDIC special assessment expense, one-time gains on equity security transactions, and the sale of an institution's insurance division[3] that were partially offset by realized losses on the sale of bond securities and higher provision expenses. The net interest margin increased for all size groups except for the largest banks, those with assets over $250 billion. The increase in net interest margin for these smaller banks resulted from a change in the yield on loans that exceeded the change in the cost of deposits. However, because of a decline in the margin for the largest banks, the industry's net interest margin in the aggregate declined modestly and remained below the pre-pandemic average after following below that level last quarter.[4]

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[2] See *Action Plan for a Safe, Fair, and Inclusive Work Environment*. Federal Deposit Insurance Corporation, available at https://www.fdic.gov/action-plan

[3] Estimated losses attributable to the protection of uninsured depositors pursuant to the systemic risk determination for Silicon Valley Bank and Signature Bank, and that will be recovered through the FDIC special assessment, were $19.2 billion as of June 30, 2024, unchanged from March 31, 2024. The industry reported approximately $4 billion in additional expense for the special assessment in first quarter 2024, and no expense in the second quarter.

[4] The "pre-pandemic average" in this statement is calculated as the average from first quarter 2015 through fourth quarter 2019.

Unrealized losses on available-for-sale and held-to-maturity securities declined slightly by $4 billion to $513 billion in the second quarter. The second quarter of 2024 marked the tenth straight quarter that the industry has reported unusually high unrealized losses since the Federal Reserve began to raise interest rates in first quarter 2022. While the third quarter FDIC Quarterly Banking Profile data will not be available until early next month, recent reductions in market interest rates in the quarter increased bank securities values, resulting in further decreases in unrealized losses. However, recent increases in longer-term interest rates subsequent from the third quarter would likely result in additional unrealized losses if measured today.

Asset quality metrics were generally favorable in the second quarter despite continued weakness in commercial real estate (CRE) and credit card portfolios, as well as deterioration in multifamily loans. The industry's overall noncurrent loan rate remained unchanged from the prior quarter at a level well below the pre-pandemic average noncurrent rate. However, the industry's noncurrent CRE and multifamily noncurrent ratios increased quarter over quarter and the credit card noncurrent rate remained elevated. Driven primarily by credit card losses, the industry's net charge-off rate remained elevated in the second quarter.

Noncurrent loan balances continued to increase in the industry's non-owner occupied CRE loan portfolio, largely driven by office loans at banks with more than $250 billion in assets. However, the largest banks tend to have lower concentrations of such loans in relation to total assets and capital than smaller institutions, mitigating the overall risk. The next tier of banks, those with between $10 billion and $250 billion in assets, generally have greater concentrations in non-owner occupied CRE loans and reported some stress in these loans compared to pre-pandemic noncurrent rates.

Domestic deposits decreased this quarter by $198 billion, or 1.1 percent, a rate well below the slight growth typically reported in second quarters prior to the pandemic. Banks with over $250 billion in assets reported much of the decline in domestic deposits, in part from tax payment outflows. These large banks reported lower uninsured deposits in the second quarter, while banks with assets less than $250 billion reported higher uninsured deposit levels.

The banking industry continues to face significant downside risks from uncertainty in the economic outlook, market interest rates, and geopolitical events. These issues could cause credit quality, earnings, and liquidity challenges for the industry. In addition, weakness in certain loan portfolios, particularly office properties, credit cards, and multifamily loans, continues to warrant monitoring. The FDIC will continue to closely monitor these risks, as well as the broader prevailing trends in the banking industry.

## **Condition of the Deposit Insurance Fund**

As of June 30, 2024, the DIF balance totaled $129.2 billion, up 7.5 billion (6.1 percent) from December 31, 2023. The DIF balance at the end of the second quarter of 2024 exceeded its previous peak of $128.2 billion in the fourth quarter of 2022, just prior to the failure of three large regional banks.[5] The increase in the DIF balance was primarily driven by assessments earned. Growth in the DIF balance and slower-than-average insured deposit growth in the first half of 2024 resulted in an increase in the reserve ratio of 6 basis points from 1.15 percent as of December 31, 2023, to 1.21 percent as of June 30, 2024.

[5] The DIF balance does not include the cost of protecting uninsured depositors pursuant to the systemic risk determination announced following the failures of Silicon Valley Bank and Signature Bank in March 2023, as the FDIC is required by statute to recover those losses through a special assessment. *See* 12 U.S.C. 1823(c)(4)(G)(ii).

There have been two bank failures thus far in 2024 at an estimated cost to the DIF of $710 million.[6] The DIF balance does not include the cost of protecting uninsured depositors pursuant to the systemic risk determination made for the two bank failures that occurred in March 2023, as the FDIC is required by statute to recover those losses through a special assessment. As of June 30, 2024, the total loss estimate for Silicon Valley Bank (SVB) and Signature Bank was $22.4 billion, of which $19.2 billion is attributable to the protection of uninsured depositors pursuant to the systemic risk determination and will be recovered through the special assessment. The first two quarterly collections of the special assessment occurred in June and September of 2024. It should be noted that as with all failed bank losses, loss estimates are periodically adjusted as the FDIC, as receiver of the failed banks, sells assets, satisfies liabilities, and incurs receivership expenses. The final cost will be determined when the FDIC terminates the receiverships.

As required by the Federal Deposit Insurance Act (FDI Act),[7] the FDIC has been operating under a restoration plan since September 15, 2020,[8] which aims to restore the DIF to the statutory minimum reserve ratio of 1.35 percent within eight years. Based on FDIC projections, the DIF reserve ratio remains on track to meet the statutory minimum reserve ratio of 1.35 percent by the eight-year deadline of September 30, 2028.[9] The FDIC will continue to

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[6] See FDIC PR-30-2024, "Fulton Bank, N.A. of Lancaster, Pennsylvania Assumes Substantially All Deposits of Republic First Bank, Philadelphia," April 26, 2024, available at: https://www.fdic.gov/news/press-releases/2024/fulton-bank-na-lancaster-pennsylvania-assumes-substantially-all-deposits, and FDIC PR-92-2024, "First Bank & Trust Co., Duncan, OK, Acquires Insured Deposits of The First National Bank of Lindsay, Lindsay, OK," October 18, 2024, available at https://www.fdic.gov/news/press-releases/2024/first-bank-trust-co-duncan-ok-acquires-insured-deposits-first-national, Information on all bank failures is available at: https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/

[7] Section 7(b)(3)(E) of the Federal Deposit Insurance Act, 12 USC 1817(b)(3)(E), available at https://www.fdic.gov/regulations/laws/rules/1000-800.html#fdic1000sec.7b.

[8] 2020 FDIC Restoration Plan, 85 FR 59306 (Sept. 21, 2020), available at https://www.fdic.gov/news/board-matters/2020/2020-09-15-notice-dis-a-fr.pdf.

[9] Section 7(b)(3)(E) of the FDI Act, 12 USC 1817(b)(3)(E).

monitor factors affecting the reserve ratio, including but not limited to, insured deposit growth and potential losses due to bank failures and related reserves.

*Request for Information on Deposit Data*

The bank failures that occurred in March 2023 and subsequent events renewed focus by financial regulatory agencies, Congress, banks, investors, and the public on deposit insurance coverage, bank funding concentrations, and certain banks' reliance on uninsured deposits. The FDIC is currently collecting and reviewing comments and information submitted in connection with a request for information regarding deposit data.[10] The request seeks information on characteristics that affect the stability and franchise value of different types of deposits and whether more detailed or more frequent reporting on these characteristics or types of deposits could enhance offsite risk and liquidity monitoring, inform analysis of the benefits and costs associated with additional deposit insurance coverage for certain types of deposits, improve risk sensitivity in deposit insurance pricing, and provide analysts and the general public with accurate and transparent deposit data.

**Small Business Lending Survey**

On October 2nd the FDIC released its 2024 Small Business Lending Survey Report with findings from a nationally representative survey of banks about their small business lending practices.[11] The survey covered fundamentals such as loan underwriting and approval, markets, and competition as well as new and timely topics such as the use of financial technology, the role of branches, and lending to start-ups. Overall, the report shows that technology has not replaced

[10] See *Request for Information on Deposits*, 89 FR 63946 (Aug. 6, 2024). See also *Request for Information on Deposits; Extension of Comment Period*, 89 FR 80899 (Oct. 4, 2024).
[11] See *FDIC Issues 2024 Small Business Lending Survey Report*, PR-84-2024 (October 2, 2024), available at https://www.fdic.gov/publications/2024-report-small-business-lending-survey

the local, relationship-oriented, and staff-intensive nature of bank small business lending. The report further finds that small and large banks manage the risks of lending to small businesses differently, particularly for smaller loans, with small banks relying on soft information gathered through relationships to a greater extent than large banks do, which enable small banks to expand access to credit. Surveys like this one generate comprehensive data that help regulatory agencies, policymakers, academics, and other stakeholders better understand how banks meet the credit needs of small firms.

## Protecting Consumers

### *Third-Party Deposit Arrangements*

Recent events have underscored concerns associated with some IDI arrangements with third parties to deliver IDI deposit products and services. For example, the bankruptcy of Synapse, a technology company that worked with several IDIs and numerous financial technology (fintech) companies, has affected the ability of consumers to access funds placed at IDIs for several months. This has resulted in significant and ongoing harm to those consumers, many of whom likely believed that their funds would remain safe and accessible due to deposit insurance representations made regarding placement of those funds in IDIs.

In the wake of Synapse's bankruptcy, affected IDIs have encountered significant difficulties in obtaining, reviewing, and reconciling Synapse's records. They have also raised concerns about the accuracy and integrity of those records. These challenges raise questions about the completeness, accuracy, and integrity of custodial account records for other IDIs' arrangements with similar third parties.

Custodial account records are critical when the FDIC makes deposit insurance determinations following the failure of an IDI. The FDIC generally relies upon a failed IDI's records to determine deposit insurance coverage. However, in certain circumstances, the FDIC's regulations also provide for consideration of records of parties other than the failed IDI if such records are maintained in good faith and in the regular course of business.[12] The Synapse bankruptcy highlights the substantial risks facing the FDIC when a failed IDI has a third-party deposit arrangement and the IDI's custodial account recordkeeping is inadequate or unreliable. Such a situation would impede the FDIC's ability to promptly make deposit insurance determinations for an IDI holding custodial deposit accounts and pay claims to depositors. The FDIC believes that custodial accounts with transactional features present unique challenges in resolving a failed IDI because making a deposit insurance determination requires the FDIC to not only gather and process records of the underlying owners maintained by parties other than the failed IDI, but also to reconcile those records with a significant amount of payment activity taking place with respect to the accounts.

On September 17, 2024, to facilitate the prompt payment of deposit insurance in the event of the failure of an IDI with third party deposit arrangements, the FDIC Board approved the publication of a Notice of Proposed Rulemaking that would establish new recordkeeping requirements for IDIs with custodial deposit accounts with transactional features, subject to a list of specific exemptions.[13] IDIs holding deposits within the scope of the proposed rule would be required to maintain records identifying the beneficial owners of those deposits,[14] the balance

[12] See 12 CFR 330.5.
[13] See *FDIC Proposes Deposit Insurance Recordkeeping Rule for Banks' Third-Party Accounts*, PR- 78-2024 (September 17, 2024); available at https://www.fdic.gov/news/press-releases/2024/fdic-proposes-deposit-insurance-recordkeeping-rule-banks-third-party
[14] For purposes of the proposed rulemaking, a beneficial owner means a person or entity that owns, under applicable law, an interest in the deposit held in a custodial deposit account. 89 FR 80135, 80152 (October 2, 2024).

attributable to each beneficial owner, and the ownership category in which the deposited funds are held. The IDI could maintain those records itself or, if certain additional requirements are satisfied, the IDI could maintain the records through an arrangement with a third party. In either case, the bank would have to be able to reconcile deposit balances on a daily basis. On November 18, the FDIC announced a 45-day extension to the public comment period to January 16, 2025, to allow interested parties additional time to analyze the proposal and prepare comments.[15] We look forward to receiving the public's comments on this proposal.

*Misrepresentations Regarding Deposit Insurance*

More broadly, in recent years, the FDIC has observed a dramatic increase in false advertising and misrepresentations about FDIC insurance coverage from nonbank companies in violation of Section 18(a)(4) of the Federal Deposit Insurance Act. Companies have also misused the FDIC logo or failed to identify the depository institution with which they have a relationship. Misuse of the FDIC-associated terms weakens consumer confidence in the FDIC and the banking system in general. Consumers are harmed by these false and misleading statements and may mistakenly believe their funds are insured when they are not. The FDIC takes appropriate action when it becomes aware of prohibited conduct. One of the ways in which we take action is to demand that the offenders cease and desist the misleading conduct.[16]

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[15] See *FDIC Announces Extension of Comment Period for Deposit Insurance Recordkeeping Rule for Banks' Third-Party Accounts,* PR-98-2024 (November 18, 2024); available at https://www.fdic.gov/news/press-releases/2024/fdic-announces-extension-comment-period-deposit-insurance-recordkeeping

[16] For example, in August 2022, when FTX was one of the largest crypto exchanges, the FDIC made public a cease-and-desist letter issued to FTX and certain of its officers to make consumers aware and not be misled as to FTX's uninsured status. The FDIC demanded FTX immediately remove its false representations that FTX itself was FDIC-insured and that certain uninsured FTX products were insured. Additionally, the FDIC may take other steps to address concerns that non-insured entities are or may be mispresenting the nature and extent of deposit insurance coverage. This includes making referrals to and/or working with other law enforcement and regulatory agencies if the egregiousness of the misconduct warrants further action.

In addition, the federal banking agencies have addressed supervisory concerns, including concerns relating to consumer protection, at specific IDIs through other types of enforcement actions, such as the FDIC's consent order entered into with Lineage Bank,[17] one of the banks now working with the bankruptcy court to sort out the ownership of funds in the Synapse bank accounts.

To further address misrepresentations and consumer confusion about FDIC insurance, on January 18, 2024, the FDIC published a final rule that sets out the requirements for how, when, and where to display the FDIC digital sign on a bank's website and mobile applications.[18] Under the final rule, non-bank entities must disclose that they are not an insured institution and that FDIC deposit insurance is only paid in the event that an insured bank fails. This should help consumers better understand when they are dealing with an insured institution versus a non-bank entity. Furthermore, considering the continuing confusion regarding non-bank entities purporting to offer pass-through deposit insurance coverage, the final rule provides that non-banks must indicate that certain conditions must be satisfied for pass–through deposit insurance coverage to apply. The final rule also requires a disclosure to customers of an insured institution when they are considering uninsured products or are moving from the bank's website to a website of a non-bank entity.

In October 2023, the FDIC launched a national deposit insurance awareness campaign to raise awareness about how it can protect consumers' money in the event of a bank failure. "Know Your Risk. Protect Your Money," is a consumer-focused campaign that aims to reach

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[17] See In re Lineage Bank, FDIC-23-0041b (Jan. 30, 2024) (Consent Order), available at https://orders.fdic.gov/sfc/servlet.shepherd/document/download/0693d00000BrElHAAV?operationContext=S1.

[18] 89 FR 3504 (January 18, 2024). The FDIC delayed the compliance date for the new sign and advertising requirements (subpart A) in the final rule from January 1, 2025, to May 1, 2025. 89 FR 84361 (October 22, 2024).

those who may have lower confidence in the U.S. banking system or who are unbanked, as well as those who use mobile payment systems, alternative banking services, and financial products that may appear to be FDIC-insured but are not.[19]

## **Strengthening the Regulation and Supervision of Banks**

### *Basel III*

The Federal Reserve, OCC, and the FDIC have worked cooperatively on the Basel III proposal.[20] We received many helpful comment letters, including from members of this committee. As Vice Chairman Barr outlined in a speech in September, we have carefully reviewed each comment letter and are in the process of considering a number of potential changes to the 2023 proposed rule that are responsive to commenters' concerns relating to credit risk, operational risk, and market risk. I look forward to the agencies working together to bring Basel III to a conclusion that will strengthen bank capital and bolster financial system resilience and stability in light of the experiences of the 2008 global financial crisis.

### *Long-Term Debt*

The FDIC continues to work on an interagency basis to finalize the Long-Term Debt rule to mitigate the resolution challenges encountered in the failure of large regional banks, such as occurred in spring 2023, and bolster financial stability.[21] Long-term debt would absorb losses before uninsured depositors. This would decrease the incentive for uninsured depositors to run. Furthermore, long-term debt would make it more likely that a resolution transaction could satisfy the statutory least-cost requirement without the need for a systemic risk exception,

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[19] See "Know Your Risk. Protect Your Money," available at https://www.fdic.gov/news/campaigns/know-your-risk.
[20] The Notice of Proposed Rulemaking can be found at 88 F.R. 64018 (September 18, 2023).
[21] The Notice of Proposed Rulemaking can be found at 88 FR 64524 (September 19, 2023).

whether by a closing weekend sale or the use of a bridge depository institution. The agencies are carefully considering the comments that were received and moving towards finalization of this important regulation.

*Final Bank Merger Act Statement of Policy*

On September 17, 2024, the FDIC Board approved a Final Statement of Policy on Bank Merger Transactions (Final Statement) for publication in the *Federal Register*.[22] The Final Statement was published on September 27, 2024, and superseded the prior FDIC Statement of Policy on Bank Merger Transactions, effective October 28, 2024.

The Final Statement updates, strengthens, and clarifies the FDIC's approach to bank mergers. It follows both the FDIC's 2022 request for information on the framework applicable to bank mergers[23] and the 2024 request for comment on a proposed Statement of Policy on Bank Merger Transactions.[24] The comments received in response to both the 2022 request for information and the 2024 request for comment have helped inform the content of the Final Statement.

The Final Statement focuses on the scope of transactions subject to FDIC approval, the FDIC's process for evaluating merger applications, and the principles that guide the FDIC's consideration of the applicable statutory factors as set forth in the Bank Merger Act.[25] Among other things, the Final Statement describes the FDIC's approach to considering concentrations in

[22] See *FDIC Board of Directors Approves Final Statement of Policy on Bank Merger Transactions*, PR-79-2024 (September 17, 2024); available at https://www.fdic.gov/news/press-releases/2024/fdic-board-directors-approves-final-statement-policy-bank-merger
[23] 87 FR 18740 (March 31, 2022).
[24] 89 FR 29222 (April 19, 2024).
[25] Section 18(c) of the FDIC Act, 12 U.S.C. § 1828(c).

relevant geographic and product markets. This begins with measuring concentrations based on local deposit shares, but as necessary will take into account any appropriate data sources and analytical approaches relevant to fully assessing the competitive effects of the transaction, including concentrations of assets. It also affirms the expectation that the merged institutions reflect sound financial performance and condition and meet applicable capital standards while balancing the analysis when the resulting IDI may initially be weaker immediately following consummation.

Further, the Final Statement articulates that the FDIC Board expects a favorable resolution of the convenience and needs factor to be clearly supported by a demonstration of how the merger transaction would position the resulting IDI to better meet the needs of the communities it serves. Absent such a demonstration, the FDIC Board reserves the authority to evaluate and act upon the merger by taking into account all of the facts and circumstances of the transaction in the context of the statutory factors. The Final Statement also addresses applying additional scrutiny to the evaluation of financial stability for transactions resulting in an institution with $100 billion or more in total assets. While the Final Statement recognizes that size alone is not dispositive for determining the risk to the U.S. banking or financial system's stability, it nonetheless recognizes that transactions that result in a large IDI are more likely to present potential stability concerns, as demonstrated by last year's regional bank failures.

Continued engagement with our fellow regulators is vitally important, especially as it relates to evaluating the competitive effects of mergers. The federal banking agencies coordinate with the Department of Justice when evaluating a bank merger's effect on competition, and the FDIC looks forward to continuing to collaborate with our fellow agencies as we evaluate bank merger transactions.

*Proposed Rule to Amend the Regulations Governing Parent Companies of ILCs*

On July 30, 2024, the FDIC Board of Directors approved a notice of proposed rulemaking to amend Part 354 of the FDIC Rules and Regulations, which governs parent companies of industrial banks and industrial loan companies (collectively referred to as industrial banks).[26]

The proposed amendments set forth additional criteria that the FDIC would consider when assessing the risks presented to an industrial bank by its parent organization and evaluating the industrial bank's ability to function independently of the parent organization, including the shell or captive nature of an industrial bank. In addition, the proposed amendments clarify the relationship between written commitments and the FDIC's evaluation of the statutory factors applicable to an industrial bank filing. The public comment period for the proposed amendments ended on October 11, 2024.[27] The FDIC is carefully considering the comments submitted as it develops the final rule.

*Improving Bank Resilience to Liquidity Stress*

Since the regional bank failures and ensuing turmoil in the spring of 2023, the FDIC has taken important actions to improve liquidity and funding risk management at insured depository institutions. For example, in July of 2023, the agencies updated the *Interagency Policy Statement on Funding and Liquidity Risk Management*, which emphasizes for bank management

[26] See, *FDIC Board Approves Proposed Rule to Amend the Agency's Regulations Governing Parent Companies of Industrial Banks and Industrial Loan Companies,* PR-64-2024 (July 30, 2024): https://www.fdic.gov/news/press-releases/2024/fdic-board-approves-proposed-rule-amend-agencys-regulations-governing.

[27] The proposed rule was published on August 12, 2024, with a 60-day comment period. See, 89 F.R. 6556.

the importance of sound liquidity risk management practices and robust contingency funding planning, including accessing the discount window.[28]

*Proposed Rule to Amend Brokered Deposits Regulations*

On July 30, 2024, the FDIC Board adopted a notice of proposed rulemaking[29] that would make changes to the brokered deposits rule based upon the FDIC's experience following the adoption of the 2020 final rule.[30] When the 2020 rule first took effect, the FDIC observed the largest quarterly decline in reported brokered deposits since brokered deposit reporting began in 1983. This decline is due to, in large part, the changes made by the 2020 final rule, which narrowed the types of deposit-related activities that are considered brokered. The FDIC views these changes as particularly problematic because these deposits continue to present the same risks as before the 2020 final rule but are now being classified as non-brokered.

If left unchanged, this decrease in reported brokered deposits could have serious consequences for IDIs and the DIF. Narrowing the types of deposits that are considered brokered, when those deposits pose the same risks as before the 2020 final rule, impedes the FDIC's ability to evaluate the extent of an IDI's reliance on less stable third-party deposits and the effects on an IDI's risk profile for supervisory and deposit insurance pricing purposes. Moreover, the FDIC is concerned that these issues expose IDIs individually and the banking system more broadly to the type of risk the statutory brokered deposit restrictions are intended to address—namely that a less than well-capitalized institution could rely on less stable third-party

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[28] See Updated Guidance: Interagency Policy Statement on Funding and Liquidity Risk Management on the Importance of Contingency Funding Plans, FIL-39-2023 (July 28, 2023), available at https://www.fdic.gov/news/financial-institution-letters/2023/fil23039.html.
[29] See Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 89 FR 68244 (August 23, 2024), available at https://www.federalregister.gov/documents/2024/08/23/2024-18214/unsafe-and-unsound-banking-practices-brokered-deposits-restrictions.
[30] *id.*

deposits for rapid growth that may weaken the safety and soundness of IDIs and the banking system and expose the DIF to increased losses.

The proposal strengthens the brokered deposit regulations by (1) simplifying certain definitions of the 2020 Final Rule to reduce operational challenges and reporting burdens on IDIs; (2) helping ensure uniform and consistent reporting of brokered deposits by IDIs; and (3) supporting the safety and soundness of the banking system by ensuring that less than well-capitalized institutions are restricted from relying on brokered deposits to support risky, rapid growth.

In response to comments from industry stakeholders, the FDIC extended the deadline for comments to November 21, 2024.[31] The FDIC will carefully consider all the comments submitted as part of the rulemaking process.

*Proposed Rule to Amend Change in Bank Control Regulations*

Under the FDIC's current regulations[32] implementing the Change in Bank Control Act (CBCA),[33] an entity is exempt from the requirement to provide the FDIC notice of a transaction that results in a change of control of a bank for which the FDIC is the primary federal regulator when the Federal Reserve Board (FRB) reviews a notice under the CBCA.

The exemption does not extend to FRB determinations to accept a passivity commitment in lieu of a notice. In such cases, the FDIC evaluates the facts and circumstances to determine whether a notice is required to be filed with the FDIC for the indirect acquisition of control of an

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[31] See *FDIC Announces Extension of Comment Period for Proposed Changes to its Brokered Deposit Regulations*, PR-86-2024 (October 8, 2024) available at:https://fdic.gov/news/press-releases/2024/fdic-announces-extension-comment-period-proposed-changes-its-brokered.
[32] 12 C.F.R. 303.80 *et seq.*
[33] Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j).

FDIC-supervised institution. In recent years, the FDIC typically has not determined that notices must be filed with the FDIC when the FRB accepts a passivity commitment in lieu of a notice. The FDIC is proposing to amend its regulations governing change in control notifications to remove the current exemption to ensure appropriate review of transactions resulting in a change of control of an FDIC-supervised bank. This will increase the likelihood that all the statutory factors in the CBCA are met, and reduce the likelihood that certain transactions would result in an adverse effect on the DIF. The proposed amendments were published in the Federal Register on August 19, 2024, subject to a 60-day comment period that ended on October 18, 2024.[34] The FDIC will carefully consider all comments received.

**Promoting Financial Stability**

*Resolution Planning for Large IDIs*

On July 9, 2024, the FDIC published a final rule that revised and improved the resolution planning requirements for large IDIs.[35] This new rule sets clear expectations for resolution submissions for banks with at least $50 billion in total assets.

Under the rule, banks with at least $100 billion in total assets must provide a comprehensive resolution plan that includes a resolution strategy that considers the structure and operations of the bank. The plans must be supported by information and capabilities necessary to the execution of that strategy. These resolution plans will materially improve the ability of the FDIC to prepare for and execute resolutions of the largest banks in a manner that preserves stability in the banking system and reduces costs to the DIF and other stakeholders. The failure

[34] 89 FR. 67002.
[35] 89 FR 56620.

of three large regional banks last year underscored the need for more robust resolution plan requirements for these institutions.

Recognizing that banks under $100 billion can also present resolution challenges, the rule requires a more limited, but valuable informational filing from banks with at least $50 billion in total assets to enhance the FDIC's resolution planning and its readiness to resolve these large banks. With these filings, the FDIC could develop its own strategies using information to which the FDIC may not ordinarily have readily available until a failure is imminent.

Under the final rule, most covered IDIs will submit resolution plans or informational filings every three years, and interim supplements in the off years that update the most timely information that would be critical if the institution were to fail. Capabilities testing and resolution-focused engagement with the banks will deepen the FDIC's understanding of the plans and allow a focus on the most important issues for each bank.

Covered IDIs that are affiliated with a U.S. Global Systemically Important Bank (U.S. GSIB) are on a two-year cycle, as they are part of the largest and most systemic and interconnected U.S. banking organizations. This two-year cycle mirrors the biennial cycle of these banking organizations' living wills submitted pursuant to Title I of the Dodd-Frank Act.

The FDIC will begin receiving resolution submissions by July 2025, and the FDIC currently is conducting outreach to all covered IDIs to ensure that they understand the rule's requirements, to respond to any questions, and to support their efforts to efficiently and effectively meet the rule's requirements.

*Final Guidance for Title I Resolution Plan Triennial Full Filers and Extension of Submission Deadline*

On July 30, 2024, the FDIC Board finalized guidance pertaining to the triennial full filer cohort required to submit Dodd-Frank Act Title I resolution plans.[36] This guidance was also finalized by the Federal Reserve Board on August 5, 2024.[37] Firms subject to this guidance are referred to as triennial full filers because they must submit a Dodd-Frank Act Title I resolution plan every three years, with those plans alternating between full and targeted submissions (i.e., 6 years between full plan submissions) and generally consist of our larger regional banks and foreign banks with a substantial presence in the United States and are not U.S. GSIBs.

This final guidance draws upon guidance that the FDIC and the Federal Reserve previously issued to the U.S. GSIBs and certain large foreign banks. This new guidance also makes appropriate modifications for the structure and complexity of this group of firms, incorporates observations drawn from analyzing prior resolution plan submissions from the triennial full filers, and reflects on key lessons learned from the failures last year.

The agencies granted a resolution plan filing extension to the affected firms, based on feedback we received and to provide firms with sufficient time to develop their plans under the new guidance. We look forward to receiving their plans on October 1, 2025.

*Results of Resolution Plan Review for Largest and Most Complex Banks*

On June 21, 2024, the FDIC and Federal Reserve announced the results of their joint review of the July 2023 Title I resolution plan submissions of the eight U.S. GSIBs. These

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[36] See *FDIC Approves Final Guidance to Enhance Resolution Planning at Large Banks,* PR-63-2024 (July 30, 2024),: available at https://www.fdic.gov/news/press-releases/2024/fdic-board-approves-proposed-rule-amend-change-bank-control-act.

[37] See *Federal Reserve Board issues final joint guidance to help certain large banks further develop their resolution plans* (August 6, 2024): available at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20240805a.htm

submissions represented the 9th resolution plan submissions by the U.S. GSIB cohort pursuant to Title I of the Dodd-Frank Act. The FDIC and Federal Reserve collaborated closely on reviewing these submissions and the agencies agreed on the facts after analyzing the plans of the eight U.S. GSIBs.

During the review, the agencies requested that six of the U.S. GSIBs that have sizeable derivatives portfolios simulate the unwinding of their derivatives and trading positions in resolution. For three firms—Bank of America, Goldman Sachs, and JPMorgan Chase—the agencies jointly found shortcomings pertaining to the implementation of their derivatives unwind strategies. Each of these companies demonstrated weaknesses in their ability to unwind their derivatives and trading portfolios that raise questions about these firms' abilities to implement their preferred resolution strategies.

For one firm—Citigroup— the agencies found shortcomings in data reliability, as well as the firm's control environment and the potential impact on its resolution strategy.

**Other Regulatory Activity**

*Section 19*

In July 2024, the FDIC published a final rule[38] to revise the FDIC's Section 19[39] regulations to conform with the Fair Hiring in Banking Act (FHBA).[40] Section 19 prohibits, without the prior written consent of the FDIC, a person with certain types of criminal offenses on their record from entering into or maintaining an employment, ownership or similar relationship

[38] 89 F.R. 65166 (August 7, 2024).
[39] Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829).
[40] The FHBA appears at section 5705 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117-263, 136 Stat. 2395, 3411.

with an IDI. The law reciprocally restricts the IDIs, as well. The changes to the Section 19 regulations are consistent with the FHBA's goal of reducing employment barriers for people who are disproportionately affected by the criminal justice system and providing regulatory relief to individuals and insured depository institutions.

*Appraisals*

On August 7, 2024, the FDIC, along with the Office of the Comptroller of the Currency (OCC), the Federal Reserve, National Credit Union Administration, Federal Housing Finance Agency, and Consumer Financial Protection Bureau published a final rule in the Federal Register titled *Appraisals: Quality Control Standards for Automated Valuation Models (AVMs) Used for Mortgage Lending Purposes*.[41] While existing nondiscrimination laws already apply to appraisals and the use of AVMs, the final rule adopts a quality control factor requiring that covered AVMs comply with applicable nondiscrimination laws. The standards should result in more reliable valuations and promote the safety and soundness of individual financial institutions using AVMs in their credit decision processes.

*Incentive Based Compensation and Corporate Governance*

The FDIC is also prepared to work with the other covered agencies in developing a regulation on incentive-based arrangements, pursuant to Section 956 of the Dodd-Frank Act, once the remaining agencies have approved the publication of the proposed rule.[42]

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[41] See, FIL-43-2024 (July 22, 2024); https://www.fdic.gov/news/financial-institution-letters/2024/final-rule-real-estate-valuations-quality-control-standards.

[42] On May 3, 2024, the FDIC along with the OCC, and the Federal Housing Agency approved for publication a proposal on incentive-based compensation. See *Agencies Issue Proposal on Incentive-Based Compensation,* PR-34-2024 (May 6, 2024) available at https://www.fdic.gov/news/press-releases/2024/agencies-issue-proposal-incentive-based-compensation. The National Credit Union Administration approved the proposal on July 18, 2024: https://ncua.gov/newsroom/press-release/2024/ncua-board-approves-proposed-rules-incentive-based-compensation-

The FDIC continues to consider public comments as it develops a final version of its proposed standards for corporate governance and risk management at covered institutions with total consolidated of $10 billion or more.[43]

*Economic Growth and Regulatory Paperwork Reduction Act*

The FDIC, together with the OCC and the Federal Reserve, has also initiated the third decennial review under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA)[44] that requires the agencies to review their regulations to identify those that are outdated, unnecessary, or unduly burdensome and to eliminate such requirements to the extent appropriate.

**Anti-Harassment Initiatives and FDIC Culture Change**

The FDIC has continued to make significant progress toward implementing a broad array of initiatives aimed at building a strong workplace culture and ensuring that all FDIC employees are free from harassment and discrimination. Many of the initiatives reflect recommendations contained in the May 2024 Report for the Special Review Committee[45] (the "Cleary Gottleib Report") or those from the FDIC Office of Inspector General[46] and have been incorporated into the FDIC's Action Plan for a Fair, Safe, and Inclusive Work Environment[47] (the "Action Plan").

succession-planning. The Federal Reserve and the Securities and Exchange Commission must also approve the publication of the proposal before it can be published.

[43]The Notice of Proposed Rulemaking can be found at 88 FR 70391 (October 11, 2023) and the extension of the comment period at 88 FR 84089 (December 4, 2023).

[44] 12 U.S.C. § 3311.

[45] See PR-35-2024, *FDIC Special Review Committee Releases Independent Report on Workplace Misconduct and Culture* (May 7, 2024) available at https://www.fdic.gov/news/press-releases/fdic-special-review-committee-releases-independent-report-workplace-misconduct.

[46] See FDIC Office of Inspector General Report: The FDIC's Sexual Harassment Prevention Program, No. Eval-24-05 (July 2024), available at https://www.fdicoig.gov/sites/default/files/reports/2024-08/EVAL-24-05.pdf.

[47] See fn. 2 *supra.*

Attached as an appendix is a detailed update on the FDIC's efforts to address workplace culture change.

## Conclusion

I appreciate the opportunity to report on the Federal Deposit Insurance Corporation's (FDIC) recent regulatory activities, and on our efforts to address the workplace culture of the FDIC and create a workplace where every FDIC employee feels safe, valued and respected. I look forward to answering your questions.

**STATEMENT BY**
**MARTIN J. GRUENBERG**
**CHAIRMAN**
**FEDERAL DEPOSIT INSURANCE CORPORATION**
**NOVEMBER 20, 2024**
**APPENDIX**

## PROGRESS REPORT ON IMPLEMENTATION OF THE FDIC's ACTION PLAN FOR A SAFE, FAIR, AND INCLUSIVE WORK ENVIRONMENT

The FDIC has continued to make significant progress toward implementing a broad array of initiatives aimed at building a strong workplace culture and ensuring that all FDIC employees are free from harassment and discrimination. The following action items describe some of the significant progress being made as part of our Action Plan efforts.

Selection of a Transformation Monitor

The FDIC Board selected Carrie H. Cohen, partner at Morrison Foerster LLP, to serve as the agency's independent Transformation Monitor.[48] The Transformation Monitor will monitor and audit the FDIC's ongoing efforts to implement its Action Plan, including recommendations from the Cleary Gottlieb Report. This important work will provide a valuable, independent evaluation of the FDIC's efforts to address workplace cultural issues and ensure employees feel safe, valued, and respected.

At Morrison Foerster LLP, Ms. Cohen serves as global co-chair of the firm's DEI strategy and Defense group, Investigations and White-Collar Defense practice, and Women's Strategy Committee. Ms. Cohen formerly served as an Assistant U.S. Attorney for the Southern

[48] See *FDIC Board Selects Carrie H. Cohen as Independent Monitor to Support Cultural Transformation*, PR-71-2024 (August 26, 2024); available at https://fdic.gov/news/press-releases/2024/fdic-board-selects-carrie-h-cohen-independent-monitor-support-cultural.

District of New York and as an Assistant Attorney General for the New York State Attorney General's office. She has extensive experience with monitorships through her service on a monitorship team in private practice and prior roles in which she helped design monitorships, both in private practice and in government.

The Transformation Monitor is meeting with FDIC officials and staff, reviewing pertinent documents and interviewing staff, conferring with other independent third-party experts, including those from the Boston Consulting Group, and assessing the FDIC's overall progress in transforming its culture. To promote transparency and trust, the Transformation Monitor has begun reporting monthly to the Board and to employees.

Selection of an Independent Third-Party Expert and Advisor

The FDIC Board selected the Boston Consulting Group (BCG) to serve as an independent third-party expert and advisor (the "Expert Advisor") to assist the agency as it implements the Action Plan and other initiatives to improve the culture, policies, procedures, and structures affecting harassment and interpersonal misconduct.[49]

BCG is coordinating closely with agency leadership and staff to provide advice and guidance surrounding initiatives in process and planned. Among other tasks, the Expert Advisor will (1) recommend a shared vision for the FDIC's organizational culture; (2) recommend a culture assessment instrument to periodically assess the FDIC's culture and changes over time; (3) evaluate the effectiveness of specific culture change outcomes; (4) propose a strategic approach that turns feedback into actions in a measurable, impactful, and sustainable manner;

[49] See *FDIC Board Selects Boston Consulting Group to Advise on Workplace Culture Initiatives*, PR-75-2024 (September 4, 2024); available at https://www.fdic.gov/news/press-releases/2024/fdic-board-selects-boston-consulting-group-advise-workplace-culture.

and (5) work with the FDIC's Corporate University to recommend additional leadership development training and coaching for executives, corporate experts, and corporate managers.

Board Approval of the Office of Professional Conduct

In June 2024, the FDIC Board approved the creation of a new independent Office of Professional Conduct (OPC)[50] that reports directly to the Board and is led by Hansel J. Cordeiro who was recently appointed by the Board.[51] The OPC is independent from, and organizationally positioned outside of, the existing management structure of the agency. The OPC is responsible for intake, investigation, and reporting on allegations of harassment, interpersonal misconduct, and retaliation at the FDIC. If allegations are substantiated, the OPC is responsible for deciding discipline and representing the FDIC in any challenges to that discipline. The OPC Director works closely with the newly established FDIC Office of Equal Employment Opportunity (described below), the OIG, and the Equal Employment Opportunity Commission (EEOC) to ensure a comprehensive and sustainable antiharassment and professional conduct program for the FDIC.

Board Approval of the Office of Equal Employment Opportunity

Also in June 2024, the Board approved the creation of the FDIC's Office of Equal Employment Opportunity (OEEO).[52] The OEEO receives, investigates, and reports complaints of discrimination and retaliation under the laws enforced by the Equal Employment Opportunity

[50] See *FDIC Board of Directors Creates Independent Office of Professional Conduct and Office of Equal Employment Opportunity,* PR-49-2024 (June 21, 2024); available at https://fdic.gov/news/press-releases/2024/fdic-board-directors-creates-independent-office-professional-conduct-and
[51] See *FDIC Appoints Hansel Cordeiro as Director of New Office of Professional Conduct*, PR-89-2024 (October 16, 2024); available at https://www.fdic.gov/news/press-releases/2024/fdic-appoints-hansel-cordeiro-director-new-office-professional-conduct.
[52] See fn. 50 *supra.*

Commission. The OEEO is led by Amanda J. Lavis, who was recently appointed by the Board and reports directly to the Board.[53]

Selection of Directors for the Office of Professional Conduct and Office of Equal Employment Opportunity

The FDIC announced the appointment of Hansel J. Cordeiro as Director of the agency's new OPC on October 16, 2024. Mr. Cordeiro joined the FDIC on October 21, 2014. Mr. Cordeiro was Executive Director of Accountability & Strategic Business Management at the U.S. Department of Transportation's Federal Aviation Administration (FAA). Mr. Cordeiro led the FAA's anti-harassment program, the largest program within the Department of Transportation; established FAA anti-harassment policies; oversaw the receipt and investigation of allegations of harassment, sexual misconduct, and reprisal involving FAA employees and contractors, as well as management actions on substantiated allegations; and identified trends and made recommendations to the FAA Administrator on ways to improve FAA policies and procedures to address systemic harassment issues. He also oversaw anti-harassment training for FAA's more than 45,000 employees and contractors.

Prior to his role at FAA, Mr. Cordeiro served at the U.S. Department of Veterans Affairs (VA) in various executive and leadership positions, including leading efforts to remediate deficiencies in the Office of Accountability and Whistleblower Protection. He also served in the Office of General Counsel as a principal legal advisor to several Secretaries of Veterans Affairs on employment and labor law issues.

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[53] See *FDIC Appoints Amanda J. Lavis as Director of Office of Equal Employment Opportunity*, PR-94-2024 (October 31, 2024); available at *https://www.fdic.gov/news/press-releases/2024/fdic-appoints-amanda-j-lavis-director-office-equal-employment-opportunity.*

On October 31, 2024, the FDIC Board of Directors announced the appointment of Amanda J. Lavis as Director of the agency's new OEEO. In this role, Ms. Lavis will lead the OEEO's work to intake, investigate, and report on complaints of employment discrimination. She joined the FDIC on November 4, 2024.

Ms. Lavis served as Chief Culture Officer for the U.S. Army Combat Capabilities Development Command, where she led cultural and structural changes that emphasized accountability, trust, and employee well-being across a global workforce. She previously served as the State of Hawaii's EEO Officer, overseeing EEO training, activities, policies, and functions across all executive branch state departments. She also provided day-to-day employment counseling to organizations as a partner at Rhoads & Sinon LLP.

Anti-Retaliation Policy

The FDIC created a new policy regarding retaliation in the workplace. The draft policy, which has been posted for employee comment and feedback, informs employees of the FDIC's commitment to maintaining a workplace free of retaliation for all forms of legally protected activity and provides guidance on reporting retaliation. The policy reinforces employees' legal rights to freely disclose suspected violations of any law, rule, or regulation or any waste, fraud, abuse, or misconduct in FDIC operations (onsite and offsite) without fear of retaliation. This policy makes clear that the FDIC will investigate claims of retaliation and will discipline any employee found to have engaged in such activity including separation from the agency. Among other proactive measures, the policy commits to regularly train its workforce on issues of retaliation and provides specific examples of unlawful retaliatory practices.

Personal Relationship Policy

The FDIC created a new policy regarding Personal Relationships in the Workplace. The draft policy, which has been posted for employee comment and feedback, prohibits a personal relationship (including a familial, romantic, or sexual relationship) between individuals who, in their professional roles, have inherently unequal positions (where one party has real or perceived authority over the other), that may create the appearance of a conflict of interest or an abuse of authority or power.

The policy reminds all employees who have personal relationships of their professional responsibilities, including the requirement of disclosure. It also communicates the importance of confidentiality, protection from retaliation for anyone complying with the policy, and appropriate enforcement actions to eliminate the potential risks associated with any reported personal relationships.

Development and Delivery of Sexual Harassment Prevention Training

The FDIC partnered with the EEOC to develop and deliver full-day in-person training sessions that address the topic of sexual harassment and inappropriate conduct in the workplace. Professional EEOC instructors are delivering the live, in-person training to all FDIC executives, managers, and staff in a classroom-style setting.

This comprehensive course covers important topics including the definition of sexual harassment, applicable laws and regulations, appropriate responses to harassment and inappropriate conduct, reporting options, prohibition against retaliation, and actual case studies. In addition to this full-day training session, the FDIC's population of Bank Examiners are attending a second day of "upstander" training that instructs participants how to prevent, disrupt, and respond to instances of harassment in the workplace and while examining banks on-site. As of October 31, 2024, 67 training sessions have been delivered to approximately 5,268 of the FDIC's approximately 6,000 employees. Remaining sessions are scheduled through the end of 2024 to complete training for the entire FDIC workforce.

Implementation of Interim Case Tracking System

The FDIC recently developed and implemented an interim automated Case Tracking System for harassment, discrimination, and other misconduct complaints. This newly developed centralized system tracks complaint trends by organization, location, complaint type, individuals against whom complaints are filed, and disciplinary actions imposed. The interim case tracking system serves as an "early warning system" to management by identifying trends that require immediate attention and remediation. Periodic "activity reports" will be generated and provided to Board members and senior leadership for transparency and further action.

The interim case tracking system will be in place until a longer-term solution is developed and implemented as part of a competitive procurement process currently underway. Ownership of the case tracking system will be transitioned to the newly created Office of Professional Conduct once that office is fully staffed and operational.

Enhanced Counseling Services for Employees

In January 2024, the FDIC notified all employees about the availability of enhanced counseling services. These services allow employees to schedule an unlimited number of appointments with one of our dedicated, licensed, clinical counselors who have expertise in helping individuals who have experienced any harassment and discrimination.  Sessions held with our counselors are confidential, private, and free of charge.  Additionally, on October 29, 2024, the FDIC sent a corporate-wide notification reminding employees of the availability of counseling services, support groups, and a list of organizations that provide a wide range of support tools.

Establishment of 24/7 Hotline for Employees

Also in January 2024, the FDIC established a 24/7 hotline staffed with professionals who are on-call to provide immediate assistance to individuals in distress.  We established this service after consulting with several Employee Resource Groups, Chairman's Diversity Advisory Councils, and Workplace Excellence Councils to determine the resources that victims of harassment and discrimination need and want.

The emotional impact of harassment and other inappropriate conduct can occur at any time.  We created the Hotline to ensure that employees can speak to a live professional consultant day or night without an appointment.  The Hotline is discreet and private.  Callers are connected to a professional consultant trained to provide crisis support and identify local and nationwide resources.  On October 29, 2024, the FDIC sent a corporate-wide notification reminding employees of the availability of 24/7 Hotline for Employees.