

June 10, 2024

Memorandum

To: Democratic Members, Committee on Financial Services
From: FSC Democratic Staff
Subject: Wednesday, June 12, Full Committee Hearing entitled, “Oversight of the FDIC’s Failed Leadership and Toxic Workplace Culture”

Hearing Details

- Full Committee
- Title: “Oversight of the FDIC’s Failed Leadership and Toxic Workplace Culture”
- Date: June 12, 2024
- Time: 10:00 a.m. EDT
- Location: Rayburn Room 2128
- Witnesses:
 - **Mr. Michael Hsu**, Acting Comptroller, Office of the Comptroller of the Currency (OCC), and Co-Chair, Special Committee of the Federal Deposit Insurance Corporation (FDIC)
 - **The Honorable Jonathan McKernan**, Director, FDIC, and Co-Chair, Special Committee of the FDIC
 - **Mr. Joon H. Kim**, Partner, Cleary Gottlieb Steen & Hamilton LLP
 - **Ms. Abena Mainoo**, Partner, Cleary Gottlieb Steen & Hamilton LLP

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I. Background

In July of 2020, the FDIC's Office of Inspector General (OIG) issued a report, finding that the agency needed to take steps to prevent and promptly address cases of sexual harassment.¹ In late 2023, the *Wall Street Journal* published a series of articles on pervasive sexual harassment and toxic workplace culture at the FDIC that have persisted over a decade.² One of the articles also alleged that FDIC Chairman Gruenberg had issues with temperament in meetings with staff.³ In response to this reporting, the FDIC set up a special committee, co-led by Acting Comptroller Hsu and FDIC Director Jonathan McKernan,⁴ which hired a law firm, Cleary Gottlieb Steen & Hamilton LLP, to conduct an independent, comprehensive assessment.⁵ The report from Cleary Gottlieb was released last month.⁶ After testifying before the Committee on May 15, where FDIC workplace culture and the Cleary report was extensively discussed,⁷ Chairman Gruenberg announced his resignation on May 20, which will be effective after a successor is nominated by the President and confirmed by the Senate.⁸ This section of the memo provides high level summaries of these reports. See the appendix of this memo for a more extensive timeline of events.

A. July 2020 FDIC OIG Report

In July of 2020, the FDIC's OIG issued a report on the FDIC's programs and policies for preventing and addressing sexual harassment in its workplace. Its review covered the time period between 2015 and April of 2019. The report, which was provided to then-FDIC Chair Jelena McWilliams, concluded that while "the 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*," it 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.⁹

The IG report made fifteen recommendations to improve the FDIC's activities to prevent and address sexual harassment. Those recommendations addressed four broad areas: improve policies and procedures regarding response to sexual harassment misconduct allegations; promote a culture in which sexual harassment is not tolerated and such allegations are promptly investigated and resolved; ensure consistent discipline; and enhance training for employees and supervisors.¹⁰ The FDIC concurred with 12 of the 15 recommendations and provided alternative actions to address the remaining three recommendations.¹¹ According to a later report, "The FDIC periodically reported to the OIG regarding the status of implementation, and the OIG confirmed each of the 15 recommended actions was closed out 'as of September 2021.'"¹²

¹ FDIC Office of Inspector General, [Preventing and Addressing Sexual Harassment](#), July 2020.

² [Strip Clubs, Lewd Photos and a Boozey Hotel: The Toxic Atmosphere at Bank Regulator FDIC - WSJ](#) 11/14/2023; ['What the Hell Is Going On at the FDIC?' Lawmakers Grill Agency Chairman - WSJ](#) 11/14/2023; [FDIC Chairman Denies Being Investigated, Then Changes Testimony - WSJ](#) 11/15/2023; [FDIC Chair, Known for Temper, Ignored Bad Behavior in Workplace - WSJ](#) 11/16/2023; [Embattled FDIC Chief Takes Responsibility for Toxic Workplace Culture - WSJ](#) 11/17/2023; [Two GOP Lawmakers Demand Records From FDIC - WSJ](#) 11/20/2023; [FDIC Chairman Martin Gruenberg Won't Oversee Misconduct Probe - WSJ](#) 11/21/2023; [FDIC Human-Resources Operation Faced Numerous Misconduct Complaints - WSJ](#) 02/08/2024.

³ [FDIC Chair, Known for Temper, Ignored Bad Behavior in Workplace - WSJ](#) 11/16/2023.

⁴ FDIC, [FDIC Board of Directors Establishes Special Committee to Oversee Independent Review of Agency Culture](#) (Nov. 21, 2023).

⁵ FDIC, [Special Committee of the FDIC Board Selects Cleary Gottlieb Steen & Hamilton LLP to Conduct Independent Review](#) (Dec. 11, 2023).

⁶ Cleary Gottlieb Steen & Hamilton, [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Apr. 2024.

⁷ FSC hearing, [Oversight of Prudential Regulators](#) (May 15, 2024).

⁸ FDIC, [Statement by FDIC Chairman Martin J. Gruenberg](#) (May 20, 2024).

⁹ FDIC Office of Inspector General, [Preventing and Addressing Sexual Harassment](#), Jul. 2020. EVAL-20-006. p. ii.

¹⁰ FDIC Office of Inspector General, [Preventing and Addressing Sexual Harassment](#), Jul. 2020. EVAL-20-006. p. iii.

¹¹ FDIC Office of Inspector General, [Preventing and Addressing Sexual Harassment](#), Jul. 2020. EVAL-20-006. p. iii.

¹² Cleary Gottlieb Steen & Hamilton, [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Apr. 2024, p. 86.

According to FDIC OIG staff, closing out a recommendation meant that the FDIC took the relevant step addressing the IG's recommendation, like adopting a new policy or procedure, and launched it in some way, for example publicizing a new procedure so that all staff were aware.¹³ However, the OIG did not continue monitoring the implementation of these recommendations to see how effective these steps taken were or if there were any changes made.¹⁴ The FDIC OIG is currently working on a follow up evaluation that is expected to be released soon "to determine whether the FDIC implemented an effective Sexual Harassment Prevention program to facilitate the reporting of sexual harassment allegations and address reported allegations in a prompt and effective manner."¹⁵

Moreover, the FDIC OIG is conducting a separate, special inquiry of FDIC's workplace culture relating to harassment and other forms of misconduct. The goal is "to determine (1) employee perceptions of the FDIC workplace culture with respect to harassment, or related misconduct, and management actions; (2) FDIC management's actions to review, process, and address complaints of harassment and related misconduct, including the management of related litigation; (3) FDIC executives' knowledge of harassment and related misconduct and what actions (if any) were taken in response; and (4) factual findings regarding selected allegations that senior officials personally engaged in harassment or related misconduct."¹⁶ This special inquiry is estimated to be completed by the end of 2024.

B. 2023 Wall Street Journal Articles and Investigations Launched

In November of 2023, the Wall Street Journal began publishing a series of articles reporting that for over a decade, the FDIC was plagued by a poor workplace culture resulting in numerous allegations and instances of sexual harassment, racial and gender discrimination, and interpersonal misconduct.¹⁷ The articles also reported allegations of instances of intemperate behavior towards employees by Chairman Gruenberg, the General Counsel, and the former Director of the Office of Minority and Women Inclusion. In response, Chairman Gruenberg announced that the FDIC did not tolerate harassment or discriminatory behavior and hired a law firm, BakerHostetler, to conduct a thorough, independent assessment to look into the allegations.¹⁸

On November 17, 2023, Republican leaders of the House Financial Services Committee publicly announced an investigation into the FDIC's workplace culture.¹⁹ On November 21, 2023, the FDIC established a Special Review Committee (SRC) co-chaired by two board members to oversee an independent review of the agency's workplace culture.²⁰ The FDIC cancelled its initial contract with BakerHostetler, and the law firm of Cleary Gottlieb was retained to conduct the independent review,²¹ which according to one FDIC official, has a projected cost of \$9.5 million.²²

¹³ FSC Democratic staff meeting with FDIC OIG staff (Jun. 5, 2024).

¹⁴ *Id.*

¹⁵ FDIC OIG, [Ongoing Work](#) (as of May 17, 2024).

¹⁶ *Id.*

¹⁷ [Strip Clubs, Lewd Photos and a Boozy Hotel: The Toxic Atmosphere at Bank Regulator FDIC - WSJ](#) 11/14/2023; [‘What the Hell Is Going On at the FDIC?’ Lawmakers Grill Agency Chairman - WSJ](#), 11/14/2023; [FDIC Chairman Denies Being Investigated, Then Changes Testimony - WSJ](#) 11/15/2023; [FDIC Chair, Known for Temper, Ignored Bad Behavior in Workplace - WSJ](#) 11/16/2023; [Embattled FDIC Chief Takes Responsibility for Toxic Workplace Culture - WSJ](#) 11/17/2023; [Two GOP Lawmakers Demand Records From FDIC - WSJ](#) 11/20/2023; [FDIC Chairman Martin Gruenberg Won't Oversee Misconduct Probe - WSJ](#) 11/21/2023; [FDIC Human-Resources Operation Faced Numerous Misconduct Complaints - WSJ](#) 02/08/2024/

¹⁸ Cleary Gottlieb Steen & Hamilton, [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Apr. 2024, p.9.

¹⁹ Letter from Patrick McHenry, Chairman, House Financial Services Committee, Bill Huizenga, Chairman, Subcommittee on Oversight and Investigations, and Andy Barr, Chairman, Subcommittee on Financial Institutions and Monetary Policy, to Martin Gruenberg, Chairman Federal Deposit Corporation, November 17, 2023.

²⁰ Cleary Gottlieb Steen & Hamilton, [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Apr. 2024, p. 9.

²¹ Cleary Gottlieb Steen & Hamilton, [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Apr. 2024, pp. 9-10.

²² Interview with Committee staff (May 14, 2024).

C. 2024 Cleary Gottlieb Report

On May 7, 2024, Cleary Gottlieb released the report (“the Cleary Report”), detailing the findings of its investigation.²³ The Cleary investigative team set up a hotline through which reports could be made about sexual harassment, discrimination and other types of inter-personal misconduct and management responses to such reports. The Cleary team also conducted 167 interviews of current and former FDIC employees as well as interviews with hundreds of individuals who reported into the hotline, and reviewed thousands of documents.²⁴ Of the 541 hotline reports that were received, Cleary determined that 510 were related to subjects that fell within the scope of its review.²⁵

Employee resource groups and other employees also described systemic issues relating to: individuals with disabilities being more vulnerable to harassment; LGBTQIA employees experiencing harassment at work; and employees facing inappropriate behavior, including bullying, and from managers, colleagues, bankers, and others.²⁶

The Cleary Report concluded that “... the FDIC has failed to provide a workplace safe from sexual harassment, discrimination, and other interpersonal misconduct...”²⁷ It also found that “a patriarchal, insular, and risk-averse culture has contributed to the conditions that allowed for this workplace misconduct to occur and persist, and that a widespread fear of retaliation, as well as a lack of clarity and credibility around internal reporting channels, has led to an underreporting of workplace misconduct over the years. Management’s responses to allegations of misconduct, as well as the culture and conditions that gave rise to them, have been insufficient and ineffective.”²⁸

In addition, the Cleary investigation reviewed allegations reported in the *Wall Street Journal* of intemperate behavior by Chairman Gruenberg. It stated that “Not everyone we spoke with agreed that Chairman Gruenberg has a temper or that he has a reputation for one. Certain employees and direct reports, including those who have joined the FDIC more recently, indicated that they themselves have not experienced or even heard of any difficult or challenging interactions with Chairman Gruenberg... And although Chairman Gruenberg can have a ‘prosecutorial’ style in which he asks questions in ‘rapid succession’ and can speak with ‘intensity,’ they described it simply as a reflection of his focus on and ‘passion’ for the issues, as well as the level of his preparation in advance of meetings.”²⁹ The report went on to say, “Based on our review, including interviews with numerous individuals and review of documents the credible evidence indicates that Chairman Gruenberg—whether or not intended or fully appreciated by him—has on occasion, including within the last few years, interacted with FDIC employees in a way that was felt to be harsh, demeaning, and insulting.”³⁰

²³ FDIC, [FDIC Special Review Committee Releases Independent Report on Workplace Misconduct and Culture](#) (May 7, 2024).

²⁴ [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, pp. 11-13.

²⁵ 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 incidences of gender or sexuality-based discrimination that did not fall into the sexual harassment related category above; 187 individuals reported 320 separate incidents of workplace bullying, threats, and other verbal abuse; and 192 individuals reported 295 separate incidents of other forms of discrimination (other than gender-based which are listed above), including: 113 individuals reporting 142 incidents of discrimination related to race and natural origin; 40 individuals reporting 43 incidents related to age discrimination; 16 individuals reporting 18 incidents of discrimination related to religion; 33 individuals reporting 35 incidents of discrimination related to parental status 33 individuals reporting 37 incidents of discrimination related to ability; 6 individuals reporting 6 incidents of discrimination related to veteran status; and 14 individuals reporting 14 incidents of discrimination related to other issues including Political affiliation, nepotism, or unspecified allegations. [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, pp. 115-116.

²⁶ [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, pp. 116.

²⁷ Cleary Gottlieb Steen & Hamilton, [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Apr. 2024, p. 1.

²⁸ Cleary Gottlieb Steen & Hamilton, [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Apr. 2024, p. 1.

²⁹ [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, p. 96.

³⁰ [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, p. 96.

Despite the mixed assessments of Chairman Gruenberg's behavior, the Cleary Report concluded that "Although we do not find Chairman Gruenberg's conduct—including his occasional outbursts—to be the root cause of all the workplace issues at the FDIC, we do find that (as a number of people we spoke to in our review have noted) 'tone at the top' is important and that positive workplace culture needs to be modeled and reinforced from the top down."³¹

As Cleary report suggests, the problems of harassment, discrimination, and poor workplace culture apparently existed for a long period of time.³² The misconduct identified by the Cleary investigation extended as far back as the 1980s.³³ Covering over 40 years, the problems existed under both Republican and Democratic chairmanships. For example, the report shows that according to the FDICs' No Fear Act annual reports to Congress covering the years 2015 through 2023, there were, on average, 33 formal Equal Employment Opportunity (EEO) complaints and 8.4 FDIC anti-harassment program inquiries or complaints annually during the five years of a Democratic chairmanship.³⁴ On average, there were 34 formal EEO complaints and 12.5 FDIC anti-harassment program inquiries or complaints annually during the four years of a Republican chairmanship.³⁵

The Cleary Report made the following seven general recommendations - with a number of specific steps related to each one, as a result of their investigation: 1) Ensure that the FDIC takes steps to protect the psychological and physical safety of employees who experienced any form of harassment or discrimination; 2) undertake a cultural transformation that reflects the culture the FDIC aspires to have, is supported by experts, and monitored by an independent third party; 3) hold leadership accountable for ensuring adherence to the FDIC's values and Code of Workplace Conduct; 4) develop and communicate new policies regarding all forms of harassment and discrimination; 5) develop and implement a more effective training program on workplace conduct, culture, and leadership for all employees; 6) enhance the structures and procedures for overseeing and implementing the FDIC's Anti-Harassment Policy and Code of Workplace conduct; 7) develop a more transparent and timely process for communicating about investigations into any form of harassment or discrimination.

Some of these parallel the 2020 IG report recommendations or are covered by the action plan the FDIC released in December 2023, after the publication of the Wall Street Journal article and in response to a request from Ranking Member Waters.³⁶ For example, both the IG Report (Recommendation #1) and the Cleary Report (Recommendation #2) suggest that the agency improve its workplace culture however they do so in different ways. The IG report posits that this change would be better effectuated if the FDIC acknowledges employees, supervisors, and managers for creating and maintaining a culture in which harassment is not tolerated,³⁷ whereas Cleary primarily focuses on those with leadership capacity to effectuate this change.³⁸ Similarly, both reports (Cleary Recommendation #5 and IG Recommendation #14) suggest that the FDIC adopt a mandatory annual training regarding the Anti-Harassment Policy and the Code of Workplace conduct.³⁹ Both the IG and Cleary believe that the FDIC's current processes,

³¹ [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, p. 96

³² [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, p. 51-52

³³ [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, p. 51-51.

³⁴ [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, p. 51-52. Specifically, there were 165 formal EEO complaints and 42 inquiries or complaints under the FDIC anti-harassment program were reported for 2015-2017 and 2022-2023.

³⁵ [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, p. 51-52. Specifically, there were 136 formal EEO complaints and 50 inquiries or complaints under the FDIC anti-harassment program were filed between 2018-2021.

³⁶ FSC, [Maxine Waters, Ranking Member, Announces Receipt of Anti-Harassment Policy Plans from FDIC, Fed. OCC and NCUA](#) (Dec. 14, 2023).

³⁷ FDIC Office of Inspector General, [Preventing and Addressing Sexual Harassment](#), Jul. 2020. EVAL-20-006. p. 13.

³⁸ [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, p. 167-168.

³⁹ FDIC Office of Inspector General, [Preventing and Addressing Sexual Harassment](#), Jul. 2020. EVAL-20-006. p. iii. 31; [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, p. 170.

procedures, and practices when it comes to tracking, investigating, and collecting data regarding harassment complaints need improvement. Both reports believe that the FDIC would benefit from a centralized database that is complete, accurate, and updated timely.⁴⁰ This repository should allow for the tracking of complaints and allegations in a way that ensures the consistency of subsequent disciplinary action across the agency. Both reports also highlight the importance of updating the complainant of the status of the investigation and the resulting action taken.⁴¹

D. Cleary Report Missing Critical Data

The Cleary report contains a lot of helpful feedback from FDIC employees, though there are some shortcomings. For example, the report does not include critical data that is important to understanding the rate of misconduct over time, which are currently the most prevalent types of misconduct, where most misconduct - by number and type - is occurring, and the nature and validity of the reported misconduct. For example, the report does not indicate how many of the allegations are unique rather than repetitive. In fact, the report states “Because various individuals reported different types of misconduct that were sometimes overlapping or difficult to characterize, the following numbers are estimates.”⁴² It does not indicate how many of the allegations were provided by victims, how many were provided by witnesses to the incident, and how many were based on second-hand information. Nor does it address how many of the allegations were corroborated or how they were corroborated. Additionally, the report states that the investigation received allegations of misconduct that date as far back as the 1980s, a span of approximately 40 years. Yet there is no data provided on the number and types of misconduct that occurred on an annual basis over that period. It is difficult to understand what types of misconduct may be increasing or declining over time, and what types of misconduct are most prevalent today and how pervasive they are. Moreover, there is no indication of where misconduct (and the types of misconduct) is most prevalent - headquarters, regional offices, or field offices.

Committee staff asked Cleary to provide the type of data discussed above, however, Cleary provided an answer that was unresponsive and reiterated information already provided in the report as well as a prior briefing. This is unfortunate because the report addresses very serious issues that confront the FDIC, and more precise information could significantly impact what type of reforms FDIC leadership should prioritize and where they should be implemented.

E. Responses to Cleary Report

In responding to the Cleary Report and the situation of workplace culture at the FDIC, some, including Chair McHenry,⁴³ issued statements calling on Chair Gruenberg to resign. Others have raised concerns about the limitations of the Cleary Report, including Better Markets, which issued a release, saying the report “fails to detail the apparent failures of former Republican Chair McWilliams and current Vice Chair Travis Hill.”⁴⁴ Furthermore, while Cleary investigators told Committee staff they had an internal firewall preventing Cleary attorneys that work with large bank clients from participating in the investigation, it is worth noting that the firm’s practice supporting clients with business before the FDIC appears extensive based on their website.⁴⁵

Ranking Member Waters issued a statement, stating in part, “The report released by Cleary Gottlieb describing FDIC’s workplace culture is troubling. This report affirms that the FDIC needs to

⁴⁰ FDIC Office of Inspector General, [Preventing and Addressing Sexual Harassment](#), Jul. 2020. EVAL-20-006. p. 22; [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, p. 170-172.

⁴¹ [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, p. 172; FDIC Office of Inspector General, [Preventing and Addressing Sexual Harassment](#), Jul. 2020. EVAL-20-006. p. 25-26.

⁴² [Report of the Special Review Committee of the Board of Directors of the FDIC](#), Cleary Gottlieb Steen & Hamilton, April 2024, p. 115.

⁴³ FSC, [McHenry Calls on FDIC Chair Gruenberg to Resign Following Damning Independent Report from Cleary Gottlieb](#) (May 7, 2024).

⁴⁴ Better Markets, [The FDIC Must Change But the Report on Misconduct Fails to Detail the Apparent Failures of Former Republican Chair McWilliams and Current Vice Chair Travis Hill](#) (May 7, 2024).

⁴⁵ Cleary Gottlieb, [Banking and Financial Institutions](#) (accessed May 13, 2024).

change its policies and programs to improve its workplace culture – particularly in the area of anti-sexual harassment. All employees deserve a work environment free from abuse and the FDIC under Democratic and Republican leadership has failed to provide that.... Unfortunately, the Cleary report diverts attention from the longstanding institutional challenges confronting the FDIC by spotlighting allegations of temperament raised against only one of three individuals who held the Chairmanship of the FDIC during the matters addressed in its review....”⁴⁶

Chairman Gruenberg announced his resignation on May 20, which will be effective after a successor is nominated by the President and confirmed by the Senate.⁴⁷ In the event the FDIC Chair becomes vacant, the Federal Deposit Insurance Act stipulates that the FDIC Vice Chair would serve as Acting Chair until a new Chair is nominated and confirmed by the Senate.⁴⁸ The Vacancies Act, which gives the President authority to appoint an acting agency head during a vacancy, does not apply to independent agencies led by multimember boards.⁴⁹ This means in the event that Chair Gruenberg were to resign without a successor confirmed by the Senate, Republican Vice Chair Travis Hill would serve as Acting Chair and the Board would have 2 Democrats and 2 Republicans until such time the President appointed and the Senate confirmed a new Chair.

Some have shared an analysis about what a quick resignation from Chair Gruenberg would mean practically speaking for the work of the FDIC.⁵⁰ Analysis from Renaissance Macro Research speculated that “A 2-2 vote would stall and probably doom politically sensitive banking policy.”⁵¹ Another analysis stated, “Major rulemakings require the approval from the Federal Reserve, OCC and FDIC. That would include the Basel 3 Endgame capital overhaul, the AFS capital treatment rule, the regional bank long-term debt rule and an expected proposal on bank liquidity. Democrats now control all three agencies. That includes a three-to-two majority on the FDIC board. If FDIC Chair Marty Gruenberg resigns, the agency would be deadlocked two-to-two. In addition, the acting chair would be a Republican.... It is why we believe Gruenberg's departure would be a positive for the bigger banks. It would take regulatory risk off the table until Democrats confirm a new chair. That might not happen this year, which means control of the FDIC would become election dependent.”⁵²

II. Key Messages

- ***All employees deserve a safe work environment. As Committee Democrats have made clear, in order to improve conditions for every FDIC worker, sweeping changes must be made to reverse the toxic culture at the agency that festered under both Republican and Democratic leadership.***
 - ***Don't be fooled. Republicans aren't holding this hearing to give workers a voice, but instead to set up Republican Vice Chair Travis Hill to take over the agency as pay back for Jelena McWilliams' resignation.***
 - ***From dismantling crucial DEI initiatives aimed at supporting employees to pushing forward anti-worker legislation and supporting a convicted felon who's been found guilty of falsifying business records to violate election laws and liable for sexual abuse, Republicans are not equipped to manage oversight of the issues at the FDIC.***
- If Republicans truly cared about the concerns expressed by FDIC workers, they would reflect on their own terrible track record of protecting workers. After all, under their watch they have dismantled critical initiatives to support workers, including right here on

⁴⁶ FSC, [Updated Ranking Member Waters' Statement on FDIC Report](#) (May 9, 2024).

⁴⁷ FDIC, [Statement by FDIC Chairman Martin J. Gruenberg](#) (May 20, 2024).

⁴⁸ Section 2(b)(3) of the [Federal Deposit Insurance Act](#)

⁴⁹ CRS, [The Vacancies Act: A Legal Overview](#) (Jul. 20, 2018).

⁵⁰ Axios, [Bombshell FDIC report imperils Biden's financial reforms](#) (May 10, 2024).

⁵¹ *Id.*

⁵² TD Cowen, [FDIC Workforce Culture Report: Impact to Banks Depends on Future of FDIC Chair](#) (May 7, 2024).

- the Hill by gutting the House Office of Diversity and inclusion. They have also advanced harmful legislation to restrict workers from joining unions and make it easier for corporations to take advantage of employees.
- o Not to mention, extreme MAGA Republicans have still yet to retract their support for the top Republican and nominee to be President who is not only a convicted felon but has also been found liable for sexual abuse. Hopefully, this concerns them too, and they will call on the former President to step down and withdraw his nomination.
 - ***The problems at the FDIC go all the way back to the 1980s under the helm of many leaders at the agency, but Cleary's report lacks specifics in certain areas and leaves a lot of important questions unanswered.***
 - o *Lackluster Response to 2020 Inspector General Report:* For example, why did former FDIC Chair Jelena McWilliams and her senior staff, including current FDIC Vice Chair Travis Hill, not do more to ensure FDIC workers had a safe workplace after the Inspector General issued a 2020 report identifying a number of concerns relating to sexual harassment?
 - o *Lack of Specificity:* While the report identified a number of troubling allegations of sexual harassment and discrimination, the report lacks specificity regarding when certain episodes occurred or how many complaints were unique.
 - o *Appearance of a Conflict of Interest:* It is unclear why FDIC hired Cleary Gottlieb to conduct this investigation, a firm with an extensive line of work consulting for the benefit of numerous FDIC-regulated entities.
 - ***Committee Democrats are pleased that the White House has vowed to put forward a nominee that is fully committed to turning the tide on the toxic work culture at the FDIC and strengthening our banking system. If Republicans really want to fix the problems at the FDIC, they should join with Democrats to quickly confirm Biden's nominee when the time comes.***

III. Setting the Record Straight

X **Misconception:** Chair Gruenberg is solely responsible for the problems at the FDIC.

- ✓ **Correction:** This is false. As the Cleary report states, the deep-rooted issues at the FDIC go all the way back to the 1980s under the leadership of various Chairs, not just Chair Gruenberg's. For example, former Chair Jelena McWilliams served as Chair from June 2018 until February 2022. During her tenure, she received an Inspector General report in July 2020 highlighting a number of concerns about sexual harassment, but the actions taken to respond to the IG's recommendations did not resolve the matter.

IV. Suggested Questions

1. **Acting Comptroller Hsu,** I am concerned that a firm with what appears to be an extensive list of bank clients with business before the FDIC, like Cleary's, was selected to conduct this review. And we have market analysts, like TD Cowen, predicting that banks would win big if Chair Gruenberg were to resign, in response to Cleary's report. Would you describe the process you took to select Cleary to conduct this independent review? Was there a competitive bidding

process for the work? If not, who suggested Cleary and why? If the Committee had selected a firm that was not so heavily tied to financial industry clients who have an interest in slowing regulatory actions by the FDIC, would that not have helped ensure there is no appearance of a conflict of interest?

2. **Mr. Kim or Ms. Mainoo**, from reading the report it seems that it is not made clear to victims of misconduct that neither the Division of Administration's Labor and Employee Relations Section (LERS), nor the Legal Division's, Labor, Employment, and Administration Section (LEAS) representatives are advocating on their behalf. Some victims may have been under the impression that those FDIC employees were their advocates. Cleary makes a suggestion that individuals alleging misconduct should have "a point person for support and information throughout the (investigation) process." Would you please elaborate on this recommendation?
 - a. **Mr. Kim or Ms. Mainoo**, how much authority or power should that point person have in the investigative role and disciplinary process, if any? What type of authority do you envision for this advocate? If none, how can that person be a true advocate for the complainant?
 - b. **Mr. Kim or Ms. Mainoo**, what needs to be done to ensure that victims of improper behavior understand that representatives from LERS/LEAS people are not acting as their advocates?
 - c. **Acting Comptroller Hsu**, what are your thoughts on this recommendation and how the FDIC should consider implementing it?
3. **Acting Comptroller Hsu and Mr. McKernan**, Recommendation #5 of the Cleary Report, suggests one annual live, in person training for all employees on Workplace Conduct and the Anti-Harassment Policy is suggested. But the IG wrote back in 2020 that, "If anti-harassment trainings are held once a 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." Why, then, does Cleary only recommend one live anti-harassment annual training? Wouldn't more frequent be more likely to establish and reinforce an anti-harassment culture within the FDIC and make it clear that it is an important issue to the leadership?
4. **Acting Comptroller Hsu and Mr. McKernan**, both the IG and the Cleary reports suggested cultural change at the FDIC. However, Cleary believed this would be effectuated by having those with more leadership capacity lead the process, while the IG in its 2020 report and recommendations stated that this was an FDIC-wide issue that would be best resolved by acknowledging employees, supervisors, and managers for creating and maintaining a culture in which harassment is not tolerated. What are your views on the FDIC leadership should be working to change workplace culture at the employee/non-leadership level?
5. **Mr. Kim or Ms. Mainoo**, the Cleary Report does not provide information on the dates of these allegations you relied upon in coming to your findings, yet the data collected spans over a period of 40 years. You do not provide a sense of whether these allegations are coming from FDIC employees in the field offices, regional offices, or HQ. This would be important information for the FDIC to know in order to prioritize what the change should be. How many allegations were made by people who experienced some type of misconduct firsthand?
 - a. How many heard about it second hand?
 - b. How many witnessed it?

- c. How does Cleary know whether the same incident was reported more than once by the same person or multiple people?
6. **Mr. Kim or Ms. Mainoo**, the Cleary report deals with a variety of misconduct: sexual harassment, racial discrimination, sexual discrimination, bullying, etc. In the report you identify the number of incidents of each type of misconduct. But Cleary did not supply data to inform us of which ones are most prevalent in the present time in order to know which types of misconduct have been increasing, decreasing, or have remained the same. Based on the allegations you've received and the follow-up you've done, which ones are the most prevalent types of misconduct today and which ones warrants primary attention? Do these issues have to be addressed in different ways and if so how?
7. **Mr. Hsu**, what should be done to alleviate situations where victims continue to work beside the accused offender? That is obviously a serious problem for a victim and understandably leaves them feeling that the organization is not supporting them. So what policies and procedures should be introduced to ensure that the parties to such events are separated?
8. **Mr. Hsu**, should the FDIC continue to allow immediate supervisors to have the final say on what disciplinary action should be taken in the event of misconduct or should a more objective committee be set up to make such determinations?
9. **Acting Comptroller Hsu and Mr. McKernan**, as directors of the corporation you have experienced the fact that data on misconduct throughout the organization has not been collected regularly or uniformly. Nor has it been regularly provided to Directors and other senior management. This was an issue highlighted in both the Inspector General's 2020 evaluation and the Cleary Report. Do you believe this has been an impediment to you understanding the full scope of misconduct that may be taking place throughout the organization? If so, what progress has been made to correct this problem and what should be done to correct the problem - how should this information be collected and report it to you so that you will continually receive information on the amount and types of misconduct being reported and where it appears to be taking place?
10. **Acting Comptroller Hsu and Mr. McKernan**, how far does the Action Plan issued by the FDIC in December of last year go in addressing the problems and recommendations identified by both the Inspector General and the Cleary report? What is the status of the implementation of that plan? As directors of the Corporation and the co-chairs of the special review committee doing to monitor the action plan, make sure it is on track, and incorporates both the recommendations of the IG and the Cleary report?
11. **Acting Comptroller Hsu and Mr. McKernan**, staff diversity at the prudential regulatory agencies continues to lag and are overwhelming white and male. Are you satisfied with the FDIC's level of diversity?
- What steps is the FDIC taking to increase diversity in your agency's workforce? How will you increase not just diversity, but inclusion, within your agencies so that women and people of color feel safe in their workplace?
 - What efforts is the FDIC considering to diversify your examination teams?
 - What efforts are you exploring to ensure there is staff diversity at all levels, and in particular, at the GS-15 and SES levels at your agencies?

12. **Acting Comptroller Hsu**, you provided information on the OCC's anti-harassment policies and procedures late last year at the request of Ranking Member Waters that was publicly released. In light of Cleary's report and recommendations, is the OCC taking any further action to review your own workplace culture and ensure you have the strongest worker safeguards in place, including for your exam teams that work in the field and on the road?

V. Social Media Toolkit

Hearing URL: <https://tinyurl.com/yzf66ur7>

YouTube URL: <https://www.youtube.com/watch?v=OT6vD9uRDMU>

- All employees deserve a safe work environment. As @FSCDems have made clear, sweeping changes must be at the FDIC to eliminate the toxic culture at the agency that festered under Republican and Democratic leadership once and for all. 📺:
- Republicans might say they're holding this hearing to give workers a voice, but don't be fooled. We're here today because Republicans are laying the groundwork to set up Vice Chair Travis Hill to take over the agency as pay back for former Chair Jelena McWilliams' resignation.

@FSCDems are calling them out. Watch HERE. 📺:
- Republicans have an abysmal track record on supporting workers. From gutting the House Office of Diversity and inclusion and pushing forward anti-worker legislation to supporting the now convicted former President who was also found liable for sexual abuse. They are *NOT* equipped to manage oversight of the issues at the FDIC. 📺:
- #MYTH: Chair Gruenberg is solely responsible for the problems at the @FDICgov .
#FACT: This is false. As the Cleary report states, the deep-rooted issues at the FDIC go all the way back to the 1980s under the leadership of both Republican & Democrat Chairs.
📺:
- Republicans aren't acting in good faith.

If they were they would immediately call for the resignation of the top Republican and nominee to be President who has been convicted of 34 felonies and found liable for sexual abuse.
- @FSCDems applaud @POTUS for vowing to put forward a nominee for the FDIC that is fully committed to:
 - ✓ Eliminating toxic work culture &
 - ✓ Strengthening our nation's banking system📺:
- The problems at the FDIC go all the way back to the 1980s under the helm of many leaders at the agency, but Cleary's report leaves a lot of important Qs unanswered.

- ✗ Lackluster response to the 2020 Inspector General report;
- ✗ Lack of specificity as it relates to certain episodes;
- ✗ Appearance of a conflict of interest w/Cleary

VI. Graphics



**THE PROBLEMS AT THE FDIC GO ALL THE WAY
BACK TO THE 1980'S, CLEARY'S REPORT LEAVES
A LOT OF IMPORTANT QUESTIONS UNANSWERED.**

**? LACKLUSTER RESPONSE TO
THE 2020 INSPECTOR
GENERAL REPORT**

**? LACK OF SPECIFICITY AS
IT RELATES TO CERTAIN
EPISODES**

**? APPEARANCE OF A CONFLICT
OF INTEREST WITH CLEARY**



[@FSCDems](#)

[@HouseFinancialCmte](#)



FDIC Myth vs. Fact

MYTH:

**Chair Gruenberg is
solely responsible
for the problems at
the FDIC.**

FACT:

- **This is false. As the Cleary report states, the deep-rooted issues at the FDIC go all the way back to the 1980's under the leadership of Republican and Democrat Chairs. Not just Gruenberg.**

[GIF LINK](#)

VII. Appendix

Timeline of FDIC Leadership and Key Events

- August 22, 2005: **Marty Gruenberg** begins serving on FDIC Board, initially as Vice Chair.
- Nov 2005 – June 2006: **Gruenberg** served as FDIC Acting Chair.
- June 2006 – July 2011: **Sheila Bair** served as Chair.
- July 2011 – Nov 2012: **Gruenberg** served as Acting Chair.
- Nov 2012 – June 2018: **Gruenberg** served as Chair.
- June 2018 – Feb 2022: **Jelena McWilliams** served as Chair.
 - July 2020: **FDIC Inspector General** issues report detailing concerns about sexual harassment.
 - September 2021: **FDIC Inspector General** closes out all recommendations from 2020 report as having been addressed.
 - Dec 2021: FDIC Directors Gruenberg, Chopra, Hsu advance a request for information regarding bank merger reviews over McWilliams objections. On New Year's Eve, **McWilliams announces resignation effective early Feb 2022.**
- Feb 2022 – Jan 2023: **Gruenberg** served as Acting Chair.
- Since Jan 5, 2023: **Gruenberg** confirmed as Chair for a five-year term, which expires Jan 2028.
 - 11/13/23: **WSJ publishes article**, “*Strip Clubs, Lewd Photos and a Boozy Hotel: The Toxic Atmosphere at Bank Regulator FDIC.*”
 - 11/15/23: **Gruenberg testifies**, agrees to provide an action plan to ensure safe workplace per Ranking Member Waters request.
 - 11/16/23: **WSJ publishes article**, “*FDIC Chair, Known for Temper, Ignored Bad Behavior in Workplace.*”
 - 11/21/23: FDIC establishes **Special Committee**, co-chaired by Acting Comptroller Hsu (D) & Director Jonathan McKernan (R).
 - 12/1/23: FDIC publishes **action plan** for safe workplace.
 - 12/11/23: Special Committee hires Cleary Gottlieb for review.
 - 5/7/24: **Cleary Gottlieb's report is released.**
 - 5/15/24 and 5/16/24: House Financial Services Committee and Senate Banking Committee hearings with prudential regulators.
 - 5/20/24: **Gruenberg announces he will resign** after successor is confirmed by Senate.