

United States Senate

November 14, 2024

The Honorable Jennifer L. Fain
Inspector General
Federal Deposit Insurance Corporation
3501 Fairfax Drive
Arlington, Virginia 22226

Dear Inspector General Fain,

We write, deeply concerned and increasingly frustrated, regarding the failure to hold accountable those who engaged in despicable, widespread, and sickening misconduct at the Federal Deposit Insurance Corporation (FDIC). We appreciate your efforts to evaluate the FDIC's Sexual Harassment Prevention Program and audit the agency's ownership and management of real estate. But evaluations and audits alone do not deliver justice. In the intervening year since initial reports surfaced, and despite clear and damning evidence, we are no closer to holding perpetrators accountable. This is unacceptable.

The independent review Cleary Gottlieb Steen & Hamilton LLP (Cleary Gottlieb) conducted, released in April 2024, documented over 500 allegations of harassment and other egregious behavior, with one in ten FDIC employees reporting some form of misconduct, including from senior agency leadership.¹ This should have triggered immediate action. Instead, there has been a shocking lack of urgency, and victims continue to suffer while justice is delayed.

As you know, Cleary Gottlieb was precluded from directly investigating claims of misconduct to hold perpetrators accountable.² Therefore, the scope of Cleary Gottlieb's review focused on FDIC policies and necessary reforms.³ Had it looked at the substance of each of the specific allegations leveled by the more than 500 employees they interviewed, there may have been significant delays in recommending any meaningful reforms.

Given this limitation, Cleary Gottlieb recommended “[a]ny allegations against the Chairperson, individuals who directly report to the Chairperson, and Executive Managers relating to violations of the Anti-Harassment Policy, as well as any newly created Anti-Fraternization Policy and Anti-Retaliation Policy should be conducted by third-party firms that have not previously completed significant work in conjunction with senior FDIC executives.”⁴ Your office, while not a law

¹ Joon H. Kim et al., Report for the Special Review Committee of the Board of Directors of the Federal Deposit Insurance Corporation (2024).

² Ebrima Santos Sanneh, *FDIC Votes to Outsource Executive-Conduct Probes Despite Pushback*, American Banker (Aug. 30, 2024, 8:36 AM), <https://www.americanbanker.com/news/fdic-votes-to-outsource-executive-conduct-probes-despite-pushback>.

³ Director Jonathan McKernan, Statement by Jonathan McKernan, Director, FDIC, Board of Directors, on Prompt Accountability for Misconduct by FDIC Executives (Aug. 28, 2024).

⁴ Joon H. Kim et al., Report for the Special Review Committee of the Board of Directors of the Federal Deposit Insurance Corporation 171 (2024).

firm, is that third party best suited to investigate allegations against senior FDIC officials as well as violations of the FDIC's new policies.

However, the FDIC Board, on a 3-2 vote, rejected a proposal to extend oversight and develop comprehensive plans to pursue the critical action items outlined in the Cleary Gottlieb report.⁵ Instead of committing to meaningful investigations, the Board narrowly passed a resolution redirecting investigations of FDIC senior leaders to external agencies, with reports indicating the General Services Administration (GSA) or the National Credit Union Administration (NCUA) will be asked to investigate.⁶ Investigating FDIC personnel for potential violations of law or policy is the function of the FDIC OIG, not that of GSA or NCUA. According to a whistleblower, the memorandum of understanding between the FDIC and NCUA has not been negotiated, meaning the investigations are nowhere close to beginning.

The evidence exists for you to initiate these sorts of investigations. For example, the Cleary Gottlieb report says there are “credible reports of outbursts, including over the last few years, some of which were corroborated by contemporaneous messages, where FDIC staff, including senior executives, have felt disrespected, disparaged, and treated unfairly.”⁷ As it relates to Chairman Gruenberg in particular, it is our understanding that your office has in its possession considerable contemporaneous evidence from subjects of Chairman Gruenberg's inappropriate workplace conduct. All evidence—including Microsoft Teams messages, e-mails, and other documentation—detailing misconduct or sexual harassment by FDIC personnel, including senior leadership, must be fully investigated, and those responsible must be held to account. You have a responsibility to seek accountability for every victim willing to work with you by fully investigating these grossly inappropriate acts.

Further, by focusing solely on external investigations of senior leadership, the majority of the FDIC Board has effectively abandoned an untold number of alleged victims whose allegations are against other employees within the agency. Every individual—regardless of their position within the agency—deserves justice, and it is your obligation as the Inspector General to ensure each allegation is fully investigated.

In your February 1, 2024 letter, you acknowledged sharing these concerns and pledged that addressing the misconduct was a top priority.⁸ However, words alone cannot resolve this issue. We urge you to act swiftly and exercise your full authority to bring investigations to fruition and hold the perpetrators accountable, no matter where they sit within the agency. Every passing day without action prolongs the suffering of those who have been victimized and further erodes confidence in the FDIC as a workplace and an institution.

⁵ Director Jonathan McKernan, Statement by Jonathan McKernan, Director, FDIC, Board of Directors, on Prompt Accountability for Misconduct by FDIC Executives (Aug. 28, 2024).

⁶ Ebrima Santos Sanneh, *FDIC Votes to Outsource Executive-Conduct Probes Despite Pushback*, American Banker (Aug. 30, 2024, 8:36 AM), <https://www.americanbanker.com/news/fdic-votes-to-outsource-executive-conduct-probes-despite-pushback>.

⁷ Joon H. Kim et al., Report for the Special Review Committee of the Board of Directors of the Federal Deposit Insurance Corporation 89 (2024).

⁸ Letter from Inspector General Jennifer L. Fain, Inspector General, FDIC, to Senator Joni K. Ernst, (Feb. 1, 2024) (on file with recipient).

For these reasons, we request your staff brief ours regarding the steps your office is taking to ensure all current and former FDIC employees responsible for creating the extremely toxic workplace culture at the agency are fully investigated. We request this briefing take place no later than December 6, 2024, and that the briefing include, at minimum, answers to the following questions:

1. Do you have access to all information gathered by the Cleary Gottlieb investigators, including contemporaneous documentation of allegations?
2. Has your office acted upon the plentiful evidence available implicating Chairman Gruenberg in the toxic workplace at the FDIC?
3. What actions has your office taken to initiate investigations into allegations included in the Cleary Gottlieb report not tied to senior leadership?
4. On February 1, 2024, you committed to conducting a review “to determine factual findings regarding selected allegations that senior officials personally engaged in harassment or related misconduct.”⁹ When will those findings be made public?
5. When a victim of sexual misconduct is willing to cooperate with your staff, what, if any, non-monetary, systemic hurdles exist that may be prohibiting further investigation, especially as related to victims who approached the Cleary Gottlieb investigators?
6. Many current and former FDIC employees are known to have engaged in sexual misconduct which certainly violated FDIC policy, and which may have risen to the level of criminal misconduct. What measures have you taken to ensure those who have done so face criminal referrals and/or appropriate professional discipline, as warranted?
7. What role is your office playing in addressing the majority of the FDIC Board’s failure to follow through on the Cleary Gottlieb report’s recommendations, particularly concerning independent investigations?

Thank you for your time and attention to this request. Please reach out to our staffs with any questions or concerns you may have.

Sincerely,



Joni K. Ernst
United States Senator

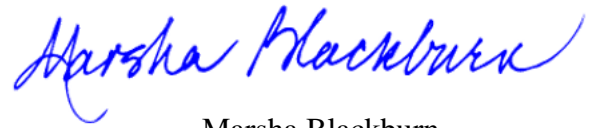


Rick Scott
United States Senator

⁹ Letter from Inspector General Jennifer L. Fain, Inspector General, FDIC, to Senator Joni K. Ernst, (Feb. 1, 2024) (on file with recipient).



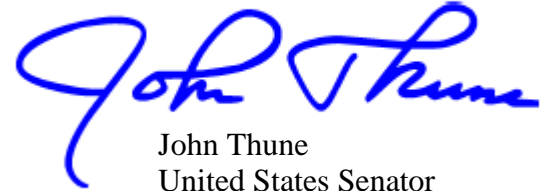
Steve Daines
United States Senator



Marsha Blackburn
United States Senator



Pete Ricketts
United States Senator



John Thune
United States Senator