UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HISTORY ASSOCIATES INCORPORATED, Plaintiff, v. FEDERAL DEPOSIT INSURANCE CORPORATION, Defendant.	Case No. 1:24-cv-1857-ACR

FDIC'S MOTION FOR SUMMARY JUDGMENT ON COUNT I AND MOTION TO DISMISS COUNT II OF THE AMENDED COMPLAINT

Defendant Federal Deposit Insurance Corporation hereby moves for summary judgment on Count I and to dismiss Count II of Plaintiff History Associates Incorporated's Amended Complaint. Accompanying this filing is a statement of material facts not in genuine dispute, a supporting memorandum, supporting declarations, and a proposed order.

Dated: July 9, 2025

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HISTORY ASSOCIATES INCORPORATED 7361 Calhoun Place, Suite 310 Rockville, MD 20855 Plaintiff, v. FEDERAL DEPOSIT INSURANCE CORPORATION, 550 17th Street, NW Washington, D.C. 20429 Defendant.	Case No. 1:24-cv-1857-ACR

MEMORANDUM IN SUPPORT OF THE FDIC'S MOTION FOR SUMMARY JUDGMENT ON COUNT I AND MOTION TO DISMISS COUNT II OF PLAINTIFF HISTORY ASSOCIATES INCORPORATED'S AMENDED COMPLAINT

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Defendant Federal Deposit Insurance Corporation, in its Corporate Capacity ("FDIC"), submits this brief in support of its motion for summary judgment on Count I and its motion to dismiss Count II of the Amended Complaint of Plaintiff History Associates, Inc. ("Plaintiff"). Count I advances a traditional Freedom of Information Act ("FOIA") claim seeking "pause letters" issued by the FDIC to financial institutions. Summary judgment should be entered in favor of the FDIC on Count I because the FDIC has produced all documents responsive to the FOIA request, and more, and the FDIC's narrowly tailored redactions of certain documents fall within well-established exemptions. Count II alleges a less-traditional FOIA cause of action—a "policy or practice" claim. That claim—which is in fact four distinct claims glommed together—fails under Rule 12(b)(6) because they are numerically insufficient, dissimilar in substance and response, and do not allege practices that violate the statute. Count II also fails under Rule 12(b)(1) because it is not ripe.

BACKGROUND

I. Plaintiff's First FOIA Request.

On November 8, 2023, Plaintiff submitted a FOIA request asking the FDIC to release "[c]opies of all 'pause letters' described in the [] October 2023 FDIC Office of Inspector General report titled 'FDIC Strategies Related to Crypto-Asset Risks'" ("OIG Report"). Dkt. No. 27-1 ("FOIA 1"). As described in the OIG Report, the FDIC sent those "pause letters" between "March 2022 and May 2023" as part of the FDIC's inquiry of financial institutions' crypto-related activities. Dkt. No. 37-3, at 3. By letter dated January 22, 2024, the FDIC denied FOIA 1 stating that the information, "if it exists . . . , would be exempt from disclosure under FOIA Exemptions 4 and 8" and "it is reasonably foreseeable that disclosure would harm an interest protected by an exemption described in subsection (b) of the FOIA, 5 U.S.C. § 552(b)." Dkt. No. 37-2, at 1.

Plaintiff administratively appealed the FDIC's response to FOIA 1 on March 25, 2024. *See* Plaintiff's Administrative Appeal of FOIA 1 (Mar. 25, 2024), Exhibit 1. By letter dated May 8, 2024, the FDIC upheld its initial response and denied Plaintiff's administrative appeal maintaining that the records were exempt from disclosure under FOIA Exemption 8. Dkt. No. 37-3.[1] The denial letter explained that communications between the FDIC and financial institutions relating to crypto-asset activity were part of the FDIC's examination process to maintain financial stability and safety and soundness in the banking system and, as such, fell within the broad breadth of Exemption 8. *Id*. The denial letter also stated that disclosing the supervisory letters would result in the type of harm Exemption 8 was intended to prevent by "reveal[ing] information about the particular banks that the letters were sent to" and "intrud[ing] into . . . communications between financial institutions and their regulator." *Id*. at 6.

Plaintiff filed this suit on June 27, 2024. Dkt. No. 1. The FDIC filed its answer on August 7, 2024. Dkt. No. 13. After an initial status conference with the Court on September 18, 2024, the FDIC provided Plaintiff with a 19-page *Vaughn* Index that identified 23 "pause letters" and described the contents therein. Dkt. No. 25-2. Following this Court's November 4, 2024 Minute Order, the FDIC reviewed the 23 "pause letters" to determine whether any portion of the letters could be segregated and released. The FDIC released 23 redacted letters to Plaintiff's counsel on November 22, 2024. Dkt. No. 26-1. On December 12, 2024, following an *in camera* review of four letters, the Court ordered the FDIC to re-review the documents and release them with fewer redactions to Plaintiff by January 3, 2025. December 12, 2024 Minute Order. The FDIC re-reviewed the original 23 "pause letters" and two additional letters and discretionarily

[1] The FDIC FOIA & Privacy Act Group receives and responds to initial FOIA requests. Appeals are handled by a separate group, the Corporate Litigation Unit. Redacted FDIC Declaration No. 1 ("Decl. 1") ¶ 10, Exhibit 2.

released all 25 letters with revised redactions to Plaintiff's counsel on January 3, 2025. Dkt. No. 27-2.[2]

New leadership took charge at the FDIC following the change in administrations. On January 22, 2025, two days after the Inauguration, the parties participated in a status conference in which the Court indicated that the "renewed [January 3, 2025] redactions . . . seem like legitimate redactions" but disagreed with the FDIC's initial interpretation of History Associate's FOIA request as being limited to the letters that the FDIC provided to the OIG. Dkt. No. 37-1, at 23:25-24:2; 3:20-21.[3] The Court ordered the FDIC to produce "any other pause letters that might exist beyond those shared with the OIG as soon as possible." *Id.* at 10:3-6. The Court also granted Plaintiff leave to amend its complaint. *Id.* at 11:1.

The FDIC then conducted a new search for "all supervisory communications with banks that sought to offer crypto-related products or services." *See* Press Release, FDIC, FDIC Releases Documents Related to Supervision of Crypto-Related Activities (Feb. 5, 2025) ("February 5 Press Release"), https://fdic.gov/news/press-releases/2025/fdic-releases-documents-related-supervisi on-crypto-related-activities. The FDIC's search included correspondence with the 24 institutions that received the 25 "pause letters," correspondence with other institutions beyond those 24, and other supervisory records involving crypto-related activities. *Id*. On February 5, 2025, the FDIC made a discretionary release of 175 records to the FDIC FOIA Reading Room to demonstrate its "commitment to enhance transparency, beyond what is required by the [FOIA] [and] fulfill the spirit of [Plaintiff's] FOIA request." *Id.*; *see* https://www.fdic.gov/foia/foia-reading-room ("FDIC

[2] The OIG Report that served as the basis for the FOIA request states "between March 2022 and May 2023, the FDIC sent letters to 24 supervised institutions." *See* FDIC OIG, FDIC Strategies Related to Crypto-Asset Risks at 5, Eval-24-01 (October 2023), Exhibit 3.

[3] On February 11, 2025, the Court noted in a minute order unsealing the transcript that the case was stayed pending further Order of the Court. February 11, 2025 Minute Order.

FOIA Reading Room"). On February 21, 2025, the FDIC released 8 additional records to the FDIC FOIA Reading Room. FDIC FOIA Reading Room. Finally, on March 14, 2025, the FDIC re-released its February 21 release with fewer redactions and released its final two records to the FDIC FOIA Reading Room. *Id*. In total, the FDIC released over 200 records totaling more than 800 pages. Certain information in those records remained exempt from disclosure pursuant to FOIA Exemptions 4, 6, and 8. Specifically, the FDIC applied redactions to: (1) institutions' names or information from which the institutions' identities could reasonably be ascertained; (2) information submitted by banks to the FDIC in the course of the FDIC's regulatory supervisory activities; (3) confidential commercial information; and (4) personally identifiable information. Dkt. Nos. 44 ¶ 10, 48 ¶ 21.

II. Plaintiff's Other FOIA Requests.

On February 12, 2025, Plaintiff amended its complaint to add Count II, which alleges that the FDIC has unlawful policies or practices of: (1) construing FOIA requests narrowly; (2) applying a categorical approach to FOIA Exemption 8 to avoid searching, reviewing and segregating records; (3) failing to conduct reasonable searches; and (4) failing to take steps necessary to ensure that records responsive to FOIA requests are properly preserved. Dkt. No. 37 ¶¶ 92 - 105. In support of each of the four alleged practices, Plaintiff relies on a single FOIA request or different combinations of five separate FOIA requests that Plaintiff sent to the FDIC between March 31, 2023 and November 8, 2023. The five requests and their treatment are summarized in the table following:

#	Dkt. #	Request Topic	FDIC Treatment	Admin. Appeal Filed?[4]
FOIA 1	37-2, 37-3, 37-8	Request for "pause letters" sent by the FDIC to banks that is the subject of Count I	• Initially, FDIC categorically denied under Exs. 4 & 8. • Plaintiff appealed arguing segregability and no foreseeable harm; FDIC sustained the categorical denial under Ex. 8. • Plaintiff filed suit; FDIC performed a search for "all supervisory communication with banks that sought to offer crypto-related products or services" and partially released records. • Some information was withheld under Exs. 4, 6, and 8.	Yes
FOIA 2	37-4, 37-6	Request for Interdivisional Working Group's charter and meeting minutes	• FDIC partially released the charter (3 pages) and searched for, reviewed, but withheld the minutes under Exs. 5 & 8. • Plaintiff appealed arguing segregability and no foreseeable harm. • FDIC remanded the request to reconsider segregability.	Yes
FOIA 3	37-7	Request for "all" communications between the FDIC and 8 government agencies pertaining to a blog post	• No responsive records found. • Plaintiff did not administratively appeal on any grounds.	No
FOIA 4	37-9, 37-10	Request for "all" communications regarding a joint statement on liquidity risks	• FDIC searched, reviewed, and partially released 28 pages. FDIC withheld information under Exs. 5, 7(E), & 8. Some records were referred to other agencies (14 pages to FRB; 24 pages to Treasury) for their direct response. • Plaintiff appealed seeking more specificity and arguing segregability and no foreseeable harm. • FDIC remanded to reconsider segregability.	Yes

[4] The FOIA statute specifies that agencies must afford requesters a minimum of 90 days after the date of an adverse determination to file an administrative appeal. 5 U.S.C. § 552(a)(6)(A)(i)(III)(aa). The FDIC's FOIA regulations provide 90 calendar days to appeal an adverse determination. 12 C.F.R. § 309.5(i)(2).

FOIA 5	37-11	Request for "all" communications regarding a policy statement issued by Federal Reserve	• No responsive records found. • Plaintiff did not administratively appeal on any grounds.	No

As summarized in the table following, the Amended Complaint cites FOIA 1 as the sole example of the FDIC's alleged failure to preserve documents (Dkt. No. 37 ¶¶ 102-105); FOIAs 1 and 2 as examples of the FDIC issuing categorical denials under Exemption 8 (Dkt. No. 37 ¶¶ 93-95); FOIAs 1 and 3 as examples of the FDIC too narrowly construing requests (Dkt. No. 37 ¶¶ 96-98); and FOIAs 1, 3, 4, and 5 as examples of the FDIC failing to adequately search for records (Dkt. No. 37 ¶¶ 99-101).

"Practice" Claims by FOIA Request

Alleged Practice	Example 1	Example 2	Example 3	Example 4
Failing to Preserve Documents	FOIA 1			
Applying Categorical Ex. 8 Denials to Avoid Search/Review/Release	FOIA 1	FOIA 2		
Narrowly Construing Requests	FOIA 1	FOIA 3		
Inadequately Searching	FOIA 1	FOIA 3	FOIA 4	FOIA 5

SUMMARY OF ARGUMENT

Plaintiff has received all that it is entitled to receive under the FOIA. Despite this, Plaintiff insists in its two-count Amended Complaint that the FDIC redacted non-exempt information in its release of "pause letters" and other discretionarily released records (Count I) and violates the FOIA through an array of disparate policies and practices (Count II). The FDIC now moves for summary judgment on Count I and to dismiss Count II.

Neither the summary-judgment evidence nor controlling law supports Count I. The FDIC performed a reasonable search for records responsive to FOIA 1 and, in the interest of transparency, discretionarily released far more than only the "pause letters" to Plaintiff. Further, the FDIC's limited redactions in the more than 200 records and 800 pages it released are proper under

FOIA Exemptions 4, 6, and 8. To redact less would harm the financial institutions or third parties to which the records pertain and undermine the flow of supervisory communications between financial institutions and their regulator. Accordingly, the FDIC asks this Court to grant its motion for summary judgment on Count I.

With respect to Plaintiff's Count II "policy or practice" claim, courts have recognized that this type of claim is a limited, narrow exception to the mootness doctrine. *E.g.*, *Khine v. U.S. Dep't of Homeland Sec.*, 943 F.3d 959, 965 (D.C. Cir. 2019). Count II's scattershot "policy or practice" allegations fail to adequately allege enough facts to meet this limited exception. Three of Plaintiff's four alleged practices (it alleges no policies) cite two or fewer examples, which is not enough to establish an actionable "practice" under any ordinary understanding of the term or relevant caselaw. In addition, several of the alleged "practices" hinge in part on FOIA requests that Plaintiff declined to administratively appeal despite having 90 days to do so following the FDIC's response. Accordingly, Plaintiff's reliance on those requests in the "policy or practice" context is jurisprudentially improper. Moreover, even if this Court were to find that Plaintiff alleges enough examples for each of these three practices, (1) the cited examples differ in both substance and treatment and (2) the alleged practices do not violate the FOIA and thus are not "unlawful"—a necessary threshold requirement for any "policy or practice" claim.

Only one of the "practices" that Plaintiff alleges—inadequately searching agency records—has more than two examples in the Amended Complaint (it nominally cites four). However, two of those examples again comprise FOIA requests that were never challenged in court or administratively appealed within the applicable timeframes. Plaintiff therefore has asserted this practice claim against the FDIC without affording the agency the chance to correct any purported wrongs related to these examples, without developing a record to support Plaintiff's

allegations, and after the time to challenge the underlying FOIAs has elapsed. Even if the Court overlooks these threshold issues, Plaintiff's fourth alleged practice fails on its own terms because Plaintiff has not adequately shown how its cited examples are (1) sufficiently alike, (2) treated the same by the FDIC, or (3) violate FOIA. Accordingly, the FDIC respectfully asks this Court to dismiss Count II for failure to state a claim on which relief can be granted. Fed. R. Civ. P. 12(b)(6).

ARGUMENT

I. STANDARD OF REVIEW

A. Motion for Summary Judgment – Federal Rule of Civil Procedure 56(a).

Summary judgment is warranted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In FOIA cases, a district court reviews the agency's action *de novo* and "the burden is on the agency to sustain its action." 5 U.S.C. § 552(a)(4)(B); *accord Mil. Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981). "[S]ummary judgment may be granted on the basis of agency affidavits if they contain reasonable specificity of detail rather than merely conclusory statements, and if they are not called into question by contradictory evidence in the record or by evidence of agency bad faith." *Aguiar v. DEA*, 865 F.3d 730, 734–35 (D.C. Cir. 2017) (citation omitted) (cleaned up). Agency affidavits or declarations are entitled to "a presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents." *Shapiro v. DOJ*, 40 F.4th 609, 613 (D.C. Cir. 2022) (citation omitted) (cleaned up). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary" are not material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

B. Motion to Dismiss – Federal Rule of Civil Procedure 12(b)(6).

In evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), courts presume the truth of factual allegations in the complaint and draw all reasonable inferences in the plaintiff's favor, *see Stewart v. Nat'l Educ. Ass'n*, 471 F.3d 169, 173 (D.C. Cir. 2006), though it need not accept "a legal conclusion couched as a factual allegation" or inferences unsupported by the facts set forth in the complaint, *Trudeau v. FTC*, 456 F.3d 178, 193 (D.C. Cir. 2006). To survive a Rule 12(b)(6) motion, a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To be "plausible on its face," the complaint must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* It is not sufficient to plead facts in conclusory terms. *Twombly*, 550 U.S. at 570.

Courts may look beyond the complaint to consider "items in the record of the case or . . . matters of general public record" in deciding a Rule 12(b)(6) motion without converting it into one for summary judgment. *Phillips v. Bureau of Prisons*, 591 F.2d 966, 969 (D.C. Cir. 1979); *see also Baird v. Snowbarger*, 744 F. Supp. 2d 279, 287 n.2 (D.D.C. 2010), *aff'd in part and vacated in part on other grounds*, *Baird v. Gotbaum*, 662 F.3d 1246 (D.C. Cir. 2011). The complaint's allegations need not be taken as true when contradicted by documents referenced therein or subject to judicial notice. *Kaempe v. Myer*s, 367 F.3d 958, 963 (D.C. Cir. 2004).

C. Motion to Dismiss – Federal Rule of Civil Procedure 12(b)(1).

Under Federal Rule of Civil Procedure 12(b)(1), "a court has an affirmative obligation to consider whether the constitutional and statutory authority exist for it to hear the case." *Nat'l Sec. Couns. v. CIA*, 898 F. Supp. 2d 233, 251–52 (D.D.C. 2012), *aff'd*, 969 F.3d 406 (D.C. Cir. 2020).

In deciding a Rule 12(b)(1) motion, the court must "treat the complaint's factual allegations as true" and afford the plaintiff "the benefit of all inferences that can be derived from the facts alleged." *Delta Air Lines, Inc. v. Exp.–Imp. Bank of U.S.*, 85 F. Supp. 3d 250, 259 (D.D.C. 2015) (cleaned up). However, factual allegations receive "closer scrutiny" in the 12(b)(1) context than in the 12(b)(6) context. *Grand Lodge of Fraternal Order of Police v. Ashcroft*, 185 F. Supp. 2d 9, 13–14 (D.D.C. 2001) (citation omitted). "[T]he plaintiff bears the burden of establishing, by a preponderance of the evidence, that the court has jurisdiction." *Whiteru v. Wash. Metro. Area Transit Auth.*, 258 F. Supp. 3d 175, 182 (D.D.C. 2017).

II. THE FDIC IS ENTITLED TO SUMMARY JUDGMENT ON COUNT I.

At the May 29, 2025, hearing before this Court, Plaintiff repeatedly acknowledged that it no longer objects to the FDIC's search for records responsive to FOIA 1. May 29, 2025 Hearing Transcript at 18:9-10, Exhibit 4 (transcript excerpts). ("[W]e do not dispute that [the FDIC] provided the full universe of documents."); 23:13-15 ("[I]n terms of responsive to our pause letter request, . . . I think we do have . . . the full universe of documents."). If, despite these statements, Plaintiff continues to take exception with the FDIC's FOIA 1 search, Plaintiff's allegations are incorrect. The FDIC performed a reasonable search for records responsive to Plaintiff's request and then some. Decl. 1 ¶¶ 23-25. The FDIC conducted a search for a broader category of documents than requested and searched not only the relevant record system but also its archive. *Id.* ¶¶ 16, 23-25. To demonstrate its commitment to transparency, the FDIC exercised its discretion to exceed its obligations under FOIA, releasing over 200 records totaling more than 800 pages. *Id.* ¶ 13. A limited amount of information in those records was appropriately withheld pursuant to FOIA Exemptions 4, 6, and 8. *Id.* ¶¶ 17, 26-29. Removal of the narrow redactions would result in foreseeable harm to the interests protected by those exemptions. *See, e.g.*, 5 U.S.C. §

552(a)(8)(A)(i); *Reps. Comm. for Freedom of Press v. FBI*, 3 F.4th 350, 370 (D.C. Cir. 2021); Decl. 1 ¶¶ 30-32; Redacted FDIC Declaration No. 2 ("Decl. 2") ¶¶ 6-7, Exhibit 5; Redacted FDIC Declaration No. 3 ("Decl. 3") ¶¶ 6-7, Exhibit 6.

A. The FDIC Conducted a Reasonable Search for Responsive Records.

The adequacy of an agency's search is measured by a standard of reasonableness under the circumstances. *See Truitt v. U.S. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). Adequacy "is generally determined not by the fruits of the search, but the appropriateness of the methods used to carry out the search." *Watkins L. & Advoc., PLLC v. DOJ*, 78 F.4th 436, 444 (D.C. Cir. 2023) (citation omitted). As Plaintiff now concedes, the FDIC's search-related efforts here were thorough, diligent, and reasonable. Exh. 4, at 18:9-10.

"[B]y the time a court considers the matter, it does not matter that an agency's *initial* search failed to uncover certain responsive documents so long as subsequent searches captured them." *Hodge v. FBI*, 703 F.3d 575, 580 (D.C. Cir. 2013). Once the agency fulfills its burden under FOIA of conducting reasonably calculated searches, the burden is on the requestor to identify additional searches that must be conducted. *Id.* Continued "speculation that . . . uncovered documents may [still] exist does not undermine the finding that the agency conducted a reasonable search." *Id.* (citation omitted). Rather, when an agency's declarations explain in reasonable detail the scope and method of the search, they are sufficient to show compliance absent "contrary evidence." *North v. DOJ*, 774 F. Supp. 2d 217, 222 (D.D.C. 2011) (citation omitted).

There is no "contrary evidence" here. FOIA 1 sought "[c]opies of all 'pause letters' described in the [] October 2023 FDIC Office of Inspector General report titled 'FDIC Strategies Related to Crypto-Asset Risks.'" Dkt. No. 27-1. Notably, the OIG Report states that "between

March 2022 and May 2023, the FDIC sent letters to 24 supervised institutions." *See* Exh. 3, at 5.[5] Because FOIA 1 was categorically denied pursuant to FOIA Exemptions 4 and 8 and then denied again on appeal pursuant to Exemption 8, the FDIC did not search for records responsive to FOIA 1 during the FOIA administrative process.[6] By January 3, 2025, following the onset of litigation, the FDIC had searched for, reviewed, and produced redacted copies of the letters described by the OIG Report—25 letters sent to 24 institutions between March 2022 and May 2023. Dkt. No. 27-2; Decl. 1 ¶ 23.

Following a January 22 Order from this Court directing the FDIC to "provide any other pause letters" (not limited to those provided to the OIG), and a change in FDIC leadership, the FDIC conducted a broader search for "all supervisory communications with banks that sought to offer crypto-related products or services." *See* February 5 Press Release; Decl. 1 ¶ 15. The FDIC performed this search in the FDIC's official repository for supervisory business records otherwise known as the Regional Automated Document Distribution ("RADD") application. Dkt. Nos. 38-1, at 11:14-17; 48 ¶ 24; Decl. 1 ¶¶ 19-20, 22-25.[7] The RADD application is backed up every 24

[5] The OIG Report attached to Plaintiff's filing was a redacted copy. The FDIC hereby attaches the unredacted copy. Exhibit 3.

[6] Contrary to Plaintiff's arguments in the Amended Complaint, Dkt. No. 37 ¶¶ 93, 120, not conducting a search when the agency believes the documents are categorically exempt from disclosure is not improper or illegal. "The Supreme Court and D.C. Circuit have 'made it clear that rules exempting whole groups of records from disclosure are not only permitted, but should be encouraged as a means of enabling agencies to meet their formidable FOIA obligations in a timely fashion.'" *Jurdi v. United States*, 485 F. Supp. 3d 83, 92 (D.D.C. 2020) (citation omitted); *see also, e.g.*, *Boyd v. Exec. Off. for U.S. Att'ys*, 87 F. Supp. 3d 58, 71 (D.D.C. 2015) (finding the agency's "categorical denials were appropriate in this case, and so its failure to search for records . . . does not undermine the overall adequacy of its search.").

[7] The RADD is a document imaging, routing, and storage application that captures, indexes, distributes, and stores electronic documents related to official bank correspondence and other supervisory business records. Decl. 1 ¶ 19. To the extent that a secure email exchange with an institution constitutes a supervisory business record, it is retained in the RADD. *Id.* The RADD

hours and archives any deleted records for 30 years pursuant to the FDIC's Document Retention policies. Decl. 1 ¶ 21; *see* Record Retention Schedule Number EIS1022.02.01, Exhibit 7.[8]

The agency took a tiered approach to its RADD searches. First, the FDIC manually reviewed the RADD Correspondence and Examination Folders for all correspondence related to a bank's crypto-related activities for each of the 24 banks that received a "pause letter" described in the OIG Report. Decl. 1 ¶ 24. Second, for the time period January 1, 2022 through January 22, 2025, the FDIC performed a targeted search using relevant terms of the RADD Correspondence Folders for financial institutions that appeared on the agency's internal crypto tracking system (excluding the 24 banks referenced above). The FDIC then reviewed approximately 20 document types for responsive records. *Id*. Third, for the time period January 1, 2022 through January 22, 2025, the FDIC performed a targeted search using relevant terms of the Correspondence Folders for all banks in RADD. The FDIC then reviewed the most relevant document types, including letters to banks, interim bank contacts, internal memos and notes, and transmittal letters. The FDIC reviewed these records for responsive records. *Id.* Finally, the FDIC voluntarily assumed the time-consuming and laborious task of reviewing archived documents for over 100 banks from November 8, 2023 (the date of Plaintiff's request) through January 23, 2025 from RADD's Correspondence Folder. The archive review found no additional responsive documents. Decl. 1 ¶ 25; Dkt. No. 48 ¶ 25.

houses over 1.9 million records, over 1.3 million of which are in RADD's Correspondence Folders. *Id.* at 22.

[8] A very limited number of FDIC employees, contractors, and former contractors can permanently delete documents from the RADD and its archive. Dkt. No. 48 ¶ 26. The overwhelming majority of users, however, do not have this ability. The FDIC interviewed the individuals with deletion authority (but for one) and confirmed that any permanent RADD deletions were performed in accordance with FDIC's routine business practices. Dkt. No. 48 ¶ 26.

To further demonstrate the Agency's commitment to transparency, "beyond what is required by" FOIA, the FDIC also discretionarily released over 200 records totaling more than 800 pages on a rolling basis to its FOIA Reading Room between January 3 and March 14, 2025. February 5 Press Release; *see also* FDIC FOIA Reading Room; Decl. 1 ¶ 13. For example, the more than 200 records covered a wide range of bank-supervisory materials: (1) correspondence that proceeded and followed a bank's "pause letter"; (2) visitation findings and reports; (3) Matters Requiring Board Attention; (4) targeted review results; (5) internal FDIC memoranda to file (not shared with an institution); (6) email correspondence with banks; (7) interim bank contacts; (8) acknowledgement letters to banks that were not engaged in/did not plan to engage in/withdrew from crypto-related activity; (9) internal examination planning memoranda (not shared with banks); and (10) bank-generated business and marketing reports and presentations (provided by banks to the FDIC). February 5 Press Release; *see also* FDIC FOIA Reading Room.

Finally, Plaintiff has conceded that it has no evidence to support its allegation that the FDIC failed to preserve records or demonstrated an intent to affirmatively destroy records. Dkt. No. 48 ¶ 27. The records responsive to Plaintiff's request reside in RADD, the agency's official repository for supervisory communication which is subject to a 30-year retention policy. Decl. 1 ¶¶ 20, 21. The RADD is backed up daily and even deleted documents remain in the RADD archive where, if necessary, they can be retrieved. *Id.* ¶ 21; Dkt. Nos. 38-1, at 11:14-21; 48 ¶ 24. Despite the safeguards provided by FDIC's 30-year record-retention policy, the agency still performed a search for relevant documents in the archive. Decl. 1 ¶ 25. That search demonstrated its record-retention policies were operating as designed and yielded no additional responsive documents. *Id.*; Dkt. Nos. 44-3, at 6; 48 ¶ 26.

B. The FDIC Appropriately Redacted Information Exempt from Disclosure Pursuant to FOIA Exemptions 4, 6, and 8.

An agency redacting portions of documents responsive to a FOIA request must demonstrate that the information withheld is supported by a FOIA exemption. *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). "Ultimately, an agency's justification for invoking a FOIA exemption is sufficient if it appears 'logical' or 'plausible.'" *Pinson v. DOJ*, 160 F. Supp. 3d 285, 293 (D.D.C. 2016) (quoting *Wolf v. CIA*, 473 F.3d 370, 374-75 (D.C. Cir. 2007)). Here, the FDIC redacted information that fell under FOIA Exemptions 4, 6, and 8. Decl. 1 ¶ 26. Generally, these redactions took the form of institutions' names, information from which institutions' identities could reasonably be ascertained, information submitted by banks to the FDIC in the course of the FDIC's supervisory activity, confidential commercial information, and personally identifiable information. *Id.*; Dkt. No. 28 ¶ 2.

1. The FDIC Appropriately Withheld Information Contained in or Related to Examination, Operating, or Conditions Reports Under FOIA Exemption 8.

Material that the FDIC redacted and withheld from the more than 200 records it released in response to FOIA 1 concerns the FDIC's supervision and regulation of financial institutions. These materials fall squarely within the ambit of FOIA Exemption 8. Decl. 1 ¶¶ 26-28. That exemption permits an agency to withhold information "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." 5 U.S.C. § 552(b)(8). The D.C. Circuit has recognized that Exemption 8 serves two purposes: (1) to protect the security of financial institutions by withholding from the public reports that contain frank evaluations of a bank's stability; and (2) to promote cooperation and communication between bank employees and examiners. *Consumers Union of U.S., Inc. v. Heimann*, 589 F.2d 531, 534 (D.C. Cir. 1978).

Exemption 8 is an exception to the general rule that FOIA exemptions are construed narrowly. In crafting the exemption, Congress "intentionally and unambiguously crafted a particularly broad, all-inclusive" provision to effectuate the exemption's purposes. *Id.* at 533; *see also, e.g.*, *Jud. Watch, Inc. v. Dep't of Treasury*, 796 F. Supp. 2d 13, 37 (D.D.C. 2011); *McKinley v. FDIC*, 744 F. Supp. 2d 128, 143 (D.D.C. 2010). Under Exemption 8, all records that pertain to a bank's financial condition and operations within the possession of a federal agency that regulates or supervises that institution are exempt, regardless of the source of those records. *Gregory v. FDIC*, 631 F.2d 896, 899 (D.C. Cir. 1980) (per curiam). And "it is not [the courts'] function, even in the FOIA context, to subvert" Congress' intended statutory design. *Consumers Union*, 589 F.2d at 533.

Because of Exemption 8's broad nature, courts have held that many types of records fall within it. For example, the exemption is not limited to records with particular formats or technical requirements. *Pub. Invs. Arb. Bar Ass'n v. SEC*, 771 F.3d 1, 4-5 (D.C. Cir. 2014) (refusing to interpret Exemption 8's reference to "examination report[s]" as a narrow term of art with a special or technical meaning). Similarly, documents that "represent the foundation of the examination process, the findings of such an examination, or its follow-up"—have been held exempt from disclosure.[9] Indeed, "an 'examination report' is any report arising out of a 'close inspection' or

[9] *Atkinson v. FDIC*, No. 79-1113, 1980 WL 355660, at *1 (D.D.C. Feb. 13, 1980); *see also, e.g.*, *Parsons v. FOIA Officer*, No. 96-4128, 1997 WL 461320, at *1 (6th Cir. Aug. 12, 1997) (communications between SEC and National Association of Securities Dealers, and SEC audits of an office of NASD); *Jud. Watch, Inc.*, 796 F. Supp. 2d at 37-38 (information obtained through an ongoing supervisory process is "related to" examination reports); *McKinley*, 744 F. Supp. 2d at 143-144 (documents created or obtained as part of agency's continuous supervision of institutions "in the hectic days and hours during which the Board and its staff strove to assess the impact of a possible disorderly failure" protected by Exemption 8).

'careful inquiry'" and therefore falls within Exemption 8. *Pub. Invs.*, 771 F.3d at 8 (citing *Examination*, WEBSTER'S NEW COLLEGIATE DICTIONARY 397 (Henry Bosley Woolf, ed., 1977)).

Here, the limited material that remains withheld includes information pertaining to the banks' identities (e.g., the bank name, logo, or other information associated with a specific institution including certain financials or business partners), information submitted by particular banks to the FDIC in the course of the FDIC's regulatory supervisory activity, and bank-specific confidential commercial information. Decl. 1 ¶ 28. The FDIC's purpose in redacting this information is to avoid potential harm to public confidence in the banking system and to preserve the close cooperation and communication between banks and regulators that is vital to the financial regulatory system and is the reason Congress enacted Exemption 8. *Id.* ¶¶ 30-31; Decl. 2 ¶¶ 4-7 ; Decl. 3 ¶¶ 4-7; *See Consumers Union*, 589 F.2d at 534; *Pub. Invs. Arb. Bar Ass'n v. SEC*, 930 F. Supp. 2d 55, 65 (D.D.C. 2013); *see also Bloomberg, L.P. v. SEC*, 357 F. Supp. 2d 156, 170 (D.D.C. 2004) (concern that "institutions continue to cooperate with regulatory agencies without fear that their confidential information will be disclosed" (citing *Nat'l Cmty. Reinv. Coal. v. NCUA*, 290 F. Supp. 2d 124, 135-36 (D.D.C. 2003))). Accordingly, the FDIC properly withheld information that could reveal a bank's identity, its submissions to the FDIC, and/or its confidential, commercial information.

2. The FDIC Appropriately Withheld Commercial or Financial Information Obtained from Persons That Is Privileged or Confidential Under FOIA Exemption 4.

Many of the records disclosed in part also contain commercial or financial information obtained from a person that is privileged or confidential and that falls within the ambit of FOIA Exemption 4. 5 U.S.C. § 552(b)(4). Congress intended this exemption to protect the interests of both the government and submitters of information. To that end, the exemption covers two broad categories of information in federal agency records: (1) trade secrets; and (2) information that is

(a) commercial or financial, *and* (b) obtained from a person, *and* (c) privileged or confidential. *Id.* Here, the records Plaintiff sought include information satisfying the second category's conditions.

First, the relevant information contains "commercial" or "financial information" because the records describe the commercial and financial interests of financial institutions under the FDIC's supervision, as well as those of third parties with whom the institutions are (or may later be) involved. Courts have regarded similar information related to business or trade as "commercial or financial." *See, e.g.*, *Lepelletier v. FDIC*, 977 F. Supp. 456, 459 (D.D.C. 1997), *aff'd in part*, *rev'd in part & remanded on other grounds*, 164 F.3d 37 (D.C. Cir. 1999). That approach also aligns with Exemption 4's intended reach, which is "sufficiently broad to encompass financial and commercial information concerning a third party" irrespective of whether the information pertains to the commercial interests of the party that provided it—as typically happens—or pertains to the commercial interests of the third party.[10]

Second, the FDIC obtained the information from a "person." *See* 5 U.S.C. § 552(b)(4). The term "person" refers to individuals *and* to a wide range of non-governmental entities, including corporations, banks, and state governments, that provide information to the

[10] *See Bd. of Trade City of Chi. v. Commodity Futures Trading Comm'n*, 627 F.2d 392, 405 (D.C. Cir. 1980) (holding that the "plain language" of Exemption 4 "does not in any way suggest that" the requested information "must relate to the affairs of the provider"), *abrogated on other grounds*, *U.S. Dep't of State v. Wash. Post. Co.*, 456 U.S. 595 (1982); *accord Critical Mass Energy Project v. NRC*, 830 F.2d 278, 281 (D.C. Cir. 1987) (citing *Board of Trade* and protecting safety reports submitted by power-plant consortium based on commercial interests of member utility companies), *vacated en banc on other grounds*, 975 F.2d 871 (D.C. Cir. 1992); *see also, e.g.*, *Miami Herald Publ'g Co. v. SBA*, 670 F.2d 610, 614 & n.7 (5th Cir. Unit B 1982) (analyzing Exemption 4 argument raised on behalf of borrowers even though no Exemption 4 argument was raised for lenders, who actually had "directly" supplied requested loan agreements to agency); Department of Justice FOIA Regulations, 28 C.F.R. § 16.8(a)(2) (2006) (defining a "submitter" as "any person or entity from whom the Department obtains business information, directly or indirectly).

government.[11] Here, information in the records were obtained from corporations, financial institutions, and state governments, all of which are "person[s]" for purposes of Exemption 4.

Third, the redacted information satisfies the Supreme Court's test for "privileged or confidential" information in *Food Marketing Institute v. Argus Leader Media*, 588 U.S. 427, 439-40 (2019). In that case, the Court held that "information is 'confidential' within the meaning of Exemption 4" when it is "both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy." *Id.* at 440. Here, the redacted information is customarily and actually treated as private by its owners (financial institutions). Moreover, some records affirmatively state that the information being provided or discussed is considered confidential by the FDIC. *See*, *e.g.*, FOIA Release, *Correspondence Related to Crypto-Related Activities*, February 5, 2025, at 7, 27, 29, 32, 37, 45, 69, 152, 190, 239, 287, 380, 434, 539, 640, 704, 750, FDIC FOIA Reading Room. Further, the financial institutions provided the redacted information to the government under an assurance of privacy during the FDIC's exercise of its regulatory and supervisory responsibilities. *See generally* 12 C.F.R. §§ 309.5(c)(8), 309.6. Many of the records released by the FDIC include information that financial institutions provided to the agency so that the FDIC might assess the safety and soundness, consumer protection, and financial stability implications of the financial institution's activities before the FDIC provided supervisory feedback. March 14 Revised Release at 11-19, 25-47, 52-71, 82-96, FDIC FOIA Reading Room.

[11] 5 U.S.C. § 551(2) (defining "person" as "an individual, partnership, corporation, association, or public or private organization other than an agency"); *see Fed. Open Mkt. Comm. v. Merrill*, 443 U.S. 340, 360 (1979) ("Exemption 4, however, is limited to information 'obtained from a person,' that is, to information obtained outside the Government." (citation omitted)); *Lepelletier*, 977 F. Supp. at 459 ("The banks from which FDIC obtained the information are 'persons' within the meaning of Exemption 4.").

Redacting that information is both appropriate and necessary to provide these institutions with the full measure of protection that Congress envisioned when enacting Exemption 4.[12]

3. The FDIC Appropriately Withheld Information About Individuals in Certain Documents Under FOIA Exemption 6.

Congress designed Exemption 6 to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information. 5 U.S.C. § 552(b)(6); *U.S. Dep't of State v. Wash. Post Co.*, 456 U.S. 595, 599 (1982) (referencing the House and Senate Reports). Exemption 6 analyses proceed in two steps. First, the information must appear in "personnel," "medical," or "similar files." *Wash. Post Co.*, 456 U.S. at 599. The Supreme Court interprets this phrase broadly to extend Exemption 6 coverage to any agency record "on an individual which can be identified as applying to that individual." *Id.* at 602. Second, disclosing the information must "constitute a clearly unwarranted invasion of personal privacy." *Id.* "This second inquiry requires [a court] to balance the privacy interest that would be compromised by disclosure against any public interest in the requested information." *Multi Ag Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1228 (D.C. Cir. 2008). This balancing test first asks whether disclosure would result in a "more than minimal" invasion of personal privacy. If so, the inquiry turns to whether that privacy interest is outweighed by the public interest in disclosure. *Id*. at 1229-30.

Here, the FDIC properly redacted information contained in agency records that pertained to individuals (e.g., account and transaction information), signatures, and work cell phone

[12] *Citizens for Resp. & Ethics in Wash. v. DOJ*, 58 F.4th 1255, 1263 (D.C. Cir. 2023) ("Given the ordinary meaning of 'commercial,' Exemption 4 paradigmatically applies to records that a business owner customarily keeps private because they 'actually reveal basic commercial operations, such as sales statistics, profits and losses, and inventories, or [that] relate to the income-producing aspects of a business.'" (citation omitted)); *id.* ("Indeed, in enacting FOIA, Congress sought to shield from public release intrinsically valuable business information such as 'business sales statistics, inventories, customer lists, and manufacturing processes.'" (quoting S. Rep. No. 89-813, at 9 (1965))); *see also* H.R. Rep. No. 89-1497, at 10 (1966) (similar).

numbers. Decl. 1 ¶ 29. Courts in this district have found that disclosing any of the aforementioned information would result in more than a minimal invasion of personal privacy that is not outweighed by the public interest in disclosure.[13] Accordingly, the FDIC properly withheld this type of information pursuant to FOIA Exemption 6.

4. The FDIC Reasonably Foresees Harm in Making Fewer Redactions, Particularly in Light of the Scope and Nature of the Released Information.

The FOIA Improvement Act of 2016 provides that "[a]n agency shall withhold information . . . only if [it] . . . reasonably foresees that disclosure would harm an interest protected by" a FOIA exemption. 5 U.S.C. § 552(a)(8)(A). Therefore, an agency must "identify specific harms to the relevant protected interests that it can reasonably foresee would actually ensue from disclosure of the withheld [information] and connect the harms in [a] meaningful way to the information withheld." *Ctr. for Investigative Reporting v. Customs & Border Prot.*, 436 F. Supp. 3d 90, 106 (D.D.C. 2019) (citation omitted); *see also* 5 U.S.C. § 552(a)(8)(A)(i)(I).

Although Plaintiff has not identified which redactions it considers improper, it insists that the FDIC could safely redact less without harming the banks or their relationship with the FDIC. Dkt. No. 37 ¶ 61. Plaintiff is wrong. Requiring the FDIC to release more exempted material would exacerbate the harm these exemptions were designed to protect. Decl. 1 ¶¶ 30-32; Decl. 2 ¶¶ 6-7; Decl. 3 ¶¶ 6-7.[14]

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[13] *See, e.g.*, *Jud. Watch, Inc. v. Exp.-Imp. Bank*, 108 F. Supp. 2d 19, 37 (D.D.C. 2000) (finding invocation of Exemption 6 to protect bank account numbers proper); *Brannum v. Dominguez*, 377 F. Supp. 2d 75, 84 (D.D.C. 2005) (finding Exemption 6 was properly applied to signatures because the privacy interest of the signers outweighed the public interest in disclosure); *Colo. Wild Pub. Lands v. U.S. Forest Serv.*, 691 F. Supp. 3d 149, 168 (D.D.C. 2023) ("Disclosing the numbers of work cell phones, which employees maintain in their homes and on their person, could subject them to the type of harassment exemption 6 was designed to prevent." (citation omitted)).

[14] The FDIC has previously offered *in camera* review to demonstrate the propriety of the agency's redactions. *See* Dkt. Nos. 48, 50.

As a general matter, the FDIC struck a balance in every exempted excerpt between transparency and potential harm. Redacting less information would further compromise the FDIC's ability to protect the banks' identities from today's software, which can be—and has been—used to analyze the unredacted information in a redacted record in efforts to identify the corresponding bank. Decl. 1 ¶¶ 30-31; Decl. 2 ¶¶ 6-7; Decl. 3 ¶¶ 6-7; *see* RegReform Webinar, Using AI and Other Modern Tech: Analyzing the FDIC Pause Letters, Davis, Wright Tremain LLP (March 14, 2025), https://www.dwt.com/insights/2025/03/using-ai-and-other-modern-tech. Requiring the FDIC to redact less would tip that balance toward causing harm to the banks and their relationship with the FDIC. *See, e.g.*, *Pub. Invs.*, 771 F.3d at 5 ("Congress enacted Exemption 8 to address the 'concern[] that release of bank examination and operating reports could endanger the fiscal well-being of [] subject banks.'" (quotation omitted)).

With respect to the FDIC's Exemption 6 redactions, "[t]he very context and purpose of [the withheld material] make[s] the foreseeability of harm manifest." *Reps. Comm. for Freedom of the Press*, 3 F.4th at 372; *Rudometkin v. United States*, --- F. 4th ----, 2025 WL 1634729, at *7 (D.C. Cir. June 10, 2025); *Amiri v. Nat'l Sci. Found.*, 664 F. Supp. 3d 1, 21 (D.D.C. 2021). Public disclosure of information pertaining to specific bank customers or other third parties (e.g., deposit and loan information), personal information (e.g., individual discussing personal plans or leave), signatures, and contact information would injure these individuals' personal privacy interests, none of whom are parties to this case. Decl. 1 ¶ 32; *see Groenendal v. Exec. Off. for U.S. Att'ys*, No. 20-cv-1030 (DLF), 2024 WL 1299333, at *10 (D.D.C. Mar. 27, 2024) (identifying EOUSA employees foreseeably leads to "unwarranted invasion of their personal privacy" and "harassment

or harm" under Exemption 6).[15] And "[a]ny minimal public benefit of disclosing" this information "does not outweigh the substantial privacy interests at stake." *See Jud. Watch, Inc. v. U.S. Dep't of Health & Hum Servs.*, No. 22-cv-3051 (DLF), 2024 WL 3924563, at *4 (D.D.C. Aug. 23, 2024); *see also Amiri*, 664 F. Supp. 3d at 21 (finding that agency satisfied foreseeability requirement where "context" indicated that disclosure of withheld information "would identify the person and, depending on their involvement, might subject them to ridicule").

Similarly, to the extent this requirement applies to Exemption 4, publicly disclosing information redacted pursuant to Exemption 4 would foreseeably harm both the interests of the government and the submitters of that information. Decl. 1 ¶¶ 30-31; Decl. 2 ¶¶ 6-7; Decl. 3 ¶¶ 6-7; *see Food Mktg. Inst.*, 588 U.S. at 440; *see also Greenspan v. Bd. of Governors of the Fed. Res. Sys.*, 643 F. Supp. 3d 176, 189 (D.D.C. 2022) (court "[a]ssum[ed]" foreseeable harm requirement applied to Exemption 4). Specifically, disclosing the names and identities of the banks and the entities with whom they were exploring a business relationship (and other similar proprietary information) would harm the economic and business interests of those entities, none of whom are parties to this case. Decl. 2 ¶¶ 6-7; Decl. 3 ¶¶ 6-7. Similarly, publicizing this information would likely limit the voluntary flow of future information between banks and the FDIC. Decl. 2 ¶¶ 6-7; Decl. 3 ¶¶ 6-7. In the Exemption 4 context, "[t]hese are textbook articulations of foreseeable harm." *See Greenspan*, 643 F. Supp. 3d at 189.

Moreover, publicly releasing information redacted pursuant to Exemption 8 would impair the FDIC's supervision of banking organizations. "The success of [banking regulators']

[15] For purposes of meeting the foreseeability requirement, an agency may group like records together into categories and explain the foreseeable harm of disclosure for each category. *Ctr. for Investigative Reporting*, 436 F. Supp. 3d at 106; *Cause of Action Inst. v. Exp.-Imp. Bank*, No. 19-cv-1915, 2022 WL 252028, at *6 (D.D.C. Jan. 27, 2022).

supervision . . . depends vitally upon the quality of communication between the regulated banking firm and the bank regulatory agency." *In re Subpoena Served upon Comptroller of Currency*, 967 F.2d 630, 633 (D.C. Cir. 1992). "Bank management must be open and forthcoming in response to the inquiries of bank examiners, and the examiners must in turn be frank in expressing their concerns about the bank." *Id*. at 634. "These conditions simply could not be met as well if communications between the bank and its regulators were not privileged." *Id*.; *see also Leopold v. DOJ*, No. 19-3192 (RC), 2021 WL 124489, at * 8 (D.D.C. Jan. 13, 2021) ("[E]vidence showing that regulatory effectiveness would be undermined by public release of [withheld information] also speaks to . . . foreseeable harm.").

In this case, public disclosure of the redacted information at issue—namely, information that, standing alone or in context, would reveal the identities of the banks with whom the FDIC interacted and their contemplated or actual business partners—would foreseeably harm the FDIC's ability to perform its statutory responsibilities as a bank supervisor. It would chill the full and frank exchange of information between the FDIC and the entities it supervises. Decl. 2 ¶¶ 6-7; Decl. 3 ¶¶ 6-7. And financial institutions would take the disclosures here into account when considering assurances of confidentiality and cooperate less than fully with bank examiners going forward. Decl. 2 ¶¶ 6-7; Decl. 3 ¶¶ 6-7; *accord Consumers Union*, 589 F.2d at 534; *Bloomberg, L.P.*, 357 F. Supp. 2d at 170 ("[T]he purpose of [Exemption 8] is . . . to ensure that [financial] institutions continue to cooperate with regulatory agencies without fear that their confidential information will be disclosed."); *cf. Reps. Comm. for Freedom of Press*, 3 F.4th at 372 (noting that "sensitivity of the context in which . . . conversations arose as well as their subject matter, and the need for confidentiality in discussions . . . together provided the particularized context for a finding of foreseeable harm").

Finally, the FDIC's *discretionary release of exempt records* in the interest of transparency does not operate as a waiver or forfeiture in any way, nor does it compel the release of more records. *See Abtew v. DHS*, 808 F.3d 895, 900 (D.C. Cir. 2015) ("[T]hat kind of forfeiture rule would encourage agencies to voluntarily release *fewer* documents, a result in tension with FOIA's broad purposes."). What remains redacted here falls squarely within FOIA Exemptions 4, 6, and 8 and should not be ordered to be released.

* * *

For the reasons stated above, this Court should grant the FDIC's motion for summary judgment as to Count I.

III. COUNT II SHOULD BE DISMISSED PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(6) AND 12(b)(1).

Generally, FOIA lawsuits become moot once an agency produces the requested records, whether voluntarily or after a court order. *See Perry v. Block*, 684 F.2d 121 (D.C. Cir. 1982) (per curiam). In *Payne Enterprises, Inc. v. United States*, the D.C. Circuit established a narrow exception to mootness where the plaintiff shows that an agency's "policy or practice" will "impair the [plaintiff's] lawful access to information in the future. 837 F.2d 486, 491 (D.C. Cir. 1988). To state a valid claim under the policy or practice doctrine (sometimes referred to as the "pattern or practice" doctrine), the plaintiff must plausibly demonstrate that: "(1) the agency in question has adopted, endorsed, or implemented a policy or practice that constitutes an ongoing failure to abide by the terms of the FOIA; and (2) the plaintiff will suffer continuing injury due to this practice." *Nat'l Sec. Couns.*, 898 F. Supp. 2d at 253 (cleaned up); *see also Payne*, 837 F.2d at 491.

"For a pattern to be substantively sufficient, it should 'concern [] *repeated requests* for a *narrowly defined class of documents*.'" *Citizens for Resp. & Ethics in Wash. v. DOJ*, 772 F. Supp. 3d 1, 12 (D.D.C. 2025) (hereinafter "*CREW*") (emphasis added) (quoting *Am. Ctr. for L. & Just.*

v. FBI, 470 F. Supp. 3d 1, 6 (D.D.C. 2020)).[16] The "similarity of the underlying requests plays a key role in discerning a consistent pattern. Relatedly, the application of a particular exemption to a particular category of documents or employment of the same non-responsive conduct, can also indicate the absence of isolated mistakes." *CREW*, 772 F. Supp. 3d at 12 (cleaned up). Finally, a plaintiff must also plead that an agency's policy or practice shows "some other failure to abide by the terms of the FOIA, and not merely isolated mistakes by agency officials." *Jud. Watch, Inc. v. Dep't of Homeland Sec.*, 895 F.3d 770, 778 (D.C. Cir. 2018) (citation omitted); *see also Khan v. DHS*, No. 22-2480 (TJK), 2023 WL 6215359, at *7 (D.D.C. Sept. 25, 2023). Thus, in order to plead a policy or practice claim, Plaintiff must establish (1) numerosity, (2) similarity between its requests, (3) similarity in the agency's responses, and (4) an unlawful FOIA practice.

A policy or practice claim also must be dismissed if it is not ripe for adjudication. *See, e.g.*, *Long v. DOJ*, 450 F. Supp. 2d 42, 85 (D.D.C. 2006). Courts evaluating ripeness look to the "the fitness of the issues for judicial decision" and "the hardship to the parties of withholding court consideration." *VanderKam v. VanderKam*, 776 F.3d 883, 888 (D.C. Cir. 2015) (citation omitted). Factors bearing on the fitness of the issue for decision include "whether consideration of that issue would benefit from a more concrete setting, and whether the agency's action is sufficiently final." *Ciba-Geigy Corp. v. U.S. E.P.A.*, 801 F.2d 430, 435 (D.C. Cir. 1986); *Payne*, 837 F.2d at 492-94 (determining that claim is ripe because it entails a "concrete legal dispute" about sufficiently crystallized policy or practice). A claim premised on contingent future events is unripe for

[16] *See also, e.g.*, *Payne*, 837 F.2d at 491 (seeking bid abstracts for almost two years); *Newport Aeronautical Sales v. Dep't of Air Force*, 684 F.3d 160, 164 (D.C. Cir. 2012) (seeking 155 technical orders regarding military equipment); *Jud. Watch, Inc. v. Dep't of Homeland Sec.*, 895 F.3d 770, 773 (D.C. Cir. 2018) (seeking VIP travel expenses).

adjudication if those events "may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (citations omitted).

Plaintiff's Amended Complaint fails to state a policy or practice claim for which relief can be granted. As discussed below, Count II should be dismissed pursuant to Federal Rule 12(b)(6) because the four separate alleged practices are too few to establish numerosity and too disparate to establish similarity, and because Plaintiff also fails to adequately allege how the supposed practices are unlawful. Count II also should be dismissed pursuant to Federal Rule 12(b)(1) on the grounds that Plaintiff's practice claims are not ripe for adjudication because they would benefit from a more concrete setting, are not sufficiently final, and Plaintiff would face no hardship if the court withheld its consideration at this time.

A. Count II Should Be Dismissed Pursuant to Fed. R. Civ. P. 12(b)(6).

Plaintiff's Amended Complaint attempts to combine four separate alleged practices—(1) failing to preserve documents; (2) issuing categorical denials under Exemption 8 to avoid searching, reviewing, and releasing segregable information; (3) failing to conduct adequate searches; and (4) narrowly construing requests—into a single count because none of them separately satisfies the requirements for an unlawful policy or practice claim. Although Plaintiff's approach creates the illusion that it submitted five FOIA requests for crypto-related documents that all encountered resistance, the documents attached to the Amended Complaint tell a very different story—one of mischaracterized, unexhausted, and unripe examples that do not sufficiently allege the purported "practices" on which Count II turns. Therefore, this Court should dismiss Count II under Rule 12(b)(6) for three related reasons:

First, Plaintiff offers too few examples for all four allegedly unlawful practices in Count II. Three of the four alleged practices cite two or fewer requests as examples, which is an insufficient

number to establish numerosity. *See CREW*, 772 F. Supp. 3d at 9; *Khan*, 2023 WL 6215359, at *7, *10; *cf. Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 n.14 (1985) ("[I]n common parlance, two of anything do not generally form a 'pattern.'"). And while the fourth alleged practice nominally cites FDIC responses to four requests, Plaintiff never challenged or administratively appealed two of them within the appropriate timeframes and therefore Plaintiff cannot rely upon those two requests as examples of "unlawful" FOIA responses bracing up a "policy or practice" claim. *See Dettmann v. DOJ*, 802 F.2d 1472, 1477 & n.8 (D.C. Cir. 1986) (finding that the plaintiff "made no attempt to present for administrative review any objections she may have had [with the agency's alleged practice]," meaning the agency "never had a fair opportunity to resolve [the issue] prior to being ushered into litigation"). Therefore, this fourth alleged practice also has (at most) two examples.

Second, even if Plaintiff did allege enough examples for any of its four alleged practices, those examples are too disparate to comprise an actionable "policy or practice." The recent decision in *CREW* illustrates why. In that case, the plaintiff alleged separate "pattern or practice" claims against the DOJ and against the FBI. *CREW*, 772 F. Supp. 3d at 1. The claim against the DOJ survived dismissal because the plaintiff alleged six examples of violative conduct that all pertained to a "narrowly defined class of documents," were about the same subject, and received the same response (categorical denials pursuant to FOIA exemptions 6 and 7). *Id.* at 12. By comparison, the claim against the FBI did not survive because it involved a hodgepodge of alleged "patterns" premised on three or fewer examples that received dissimilar responses. *Id.* at 15-16 ("DOJ asserts that the responses to CREW's three [FBI] requests were not uniform, thereby dooming Count III . . . . The court agrees."). Like the claim against the FBI in *CREW*, Plaintiff's

examples rest on dissimilar requests that received dissimilar responses and, as a result, fail to establish a practice.

Third, Plaintiff also fails to adequately allege how the FDIC, in engaging in the alleged practices, failed to abide by the FOIA—a legal requirement. *See id.* at 15 (finding allegations that DOJ issued six unlawful Glomar responses in contradiction to D.C. Circuit precedent sufficient to survive a motion to dismiss); *Jud. Watch, Inc.*, 895 F.3d at 780 (finding the agency's failure to release non-exempt records until requestor filed lawsuits on 6 separate occasions adequately demonstrated a FOIA violation).

1. Plaintiff Fails to Adequately Allege a Practice of the FDIC Failing to Preserve and/or Destroying Documents.

Plaintiff's claim that the FDIC fails to "take the steps necessary to ensure that records responsive to FOIA requests are properly preserved" or "inadvertently or intentionally destroyed [documents]" rests solely on FOIA 1 and empty references to "whistleblower allegations recounted by a U.S. Senator". Dkt. No. 37 ¶¶ 11, 92, 103, 119, 123. Not only has Plaintiff now backed off of these claims in the present case, Dkt. No. 48 ¶ 27, but Plaintiff's Amended Complaint fails to plausibly allege the numerosity or unlawful conduct necessary to establish this practice claim.

First, Plaintiff does not allege a single FOIA request, let alone repeated requests, in support of this alleged practice. On the contrary, Plaintiff has conceded that it has *no* evidence that the FDIC failed to preserve or deliberately destroyed documents responsive to FOIA 1. Dkt. Nos. 48 ¶ 27; 50 at 9. Further, Plaintiff alleges no actual factual support for the whistleblower allegations it recounts in its Amended Complaint. Dkt. No. 37 ¶¶ 11, 92, 103, 119. Notably, this Court asked Plaintiff's counsel for additional facts regarding the alleged whistleblower allegations at the January 22, 2025 hearing. Dkt. No. 37-1, at 21:6-13. Plaintiff's counsel admitted not having contacted the Senator's staff at that time. *Id.* Three weeks later, Plaintiff filed the Amended

Complaint offering no additional information regarding these allegations but continuing to rely on them as factual support of the alleged practice. Dkt. No. 37 ¶¶ 11, 92, 118, 119.

Second, even if the Court found that the Amended Complaint plausibly alleges that the FDIC failed to preserve or destroyed documents responsive to FOIA 1 in the present case (despite Plaintiff's admission to the contrary), Plaintiff does not allege that the FDIC repeated this supposed practice when processing its additional FOIA requests. Therefore, Plaintiff's allegations of past or future violations based on when the FDIC issued a legal hold for FOIA 1 remain theoretical and are not supported by actual facts in the Amended Complaint. Moreover, a "single FOIA violation is insufficient as a matter of law to state a claim for relief based on a policy, pattern, or practice of violating FOIA." *Muttitt v. U.S. Cent. Command*, 813 F. Supp. 2d 221, 231 (D.D.C. 2011), *see also Pub. Emps. for Env't Resp. v. U.S. Dep't of Interior*, No. 06-182, 2006 WL 3422484, at *9 (D.D.C. Nov. 28, 2006). Accordingly, the Amended Complaint does not plead enough facts to allege that the FDIC has a practice of failing to preserve or destroying documents that are responsive to FOIA requests.

Third, Plaintiff does not adequately plead unlawful conduct. Plaintiff relies on a false presumption that the FDIC has destroyed or failed to preserve documents that are responsive to FOIA requests based solely on when the agency implemented a legal hold in this case. The FDIC instituted a legal hold within two weeks of when allegations of destruction arose, notwithstanding the source behind the allegations. Dkt. No. 38-1, at 11:22-12:1. Instituting the legal hold at that time did not violate the FOIA, particularly where, as Plaintiff has already conceded, the FDIC did not destroy or lose documents. In fact, Plaintiff has also conceded that the law does not plainly require a legal hold. *See* Exh. 4, at 22:3-5 ("I don't think there's a case saying you absolutely need a litigation hold, but you need something, and we don't think they have anything."). Even so—

and contrary to Plaintiff's counsel's conjecture—the FDIC did have "something" to adequately protect the documents sought in this case: a 30-year retention policy protecting supervisory communications (including "pause letters") between the FDIC and financial institutions in a record system that can recall deleted documents when necessary. Dkt. Nos. 38-1, at 11:14-21; 48 ¶ 24; Exh. 6.

2. Plaintiff Fails to Adequately Allege a Practice of the FDIC Categorically Applying Exemption 8 to Avoid Searching, Reviewing, and Releasing Segregable Records.

Plaintiff's claim that the FDIC categorically applies Exemption 8 to avoid searching, reviewing, and releasing segregable records rests on FOIAs 1 and 2. However, Plaintiff's Amended Complaint fails to plausibly allege (1) representative examples of this practice, (2) numerosity, (3) similarity, and (4) unlawful conduct in support of this supposed practice.

a. Plaintiff's Alleged Categorical-Denial Practice Rests on a Single, Numerically Insufficient Example.

As an initial matter, two FOIAs are not enough to establish numerosity. *See supra* pp. 27-28. Moreover, contrary to Plaintiff's assertions and as established by the attachments to the Amended Complaint (which the Court can consider on a motion to dismiss),[17] the FDIC never categorically denied FOIA 2. FOIA 2 sought *both* the charter and the meeting minutes for an intra-agency crypto asset working group as described in the OIG Report. As to the former, Exhibits E and F of the Amended Complaint demonstrate that the FDIC searched for, reviewed, and partially released records pertaining to the charter. Dkt. No. 37-6. As to the latter, Exhibit E of the Amended Complaint makes clear that the FDIC performed a search for the meeting minutes, reviewed the

[17] *E.g.*, *Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993) ("To decide a motion to dismiss, courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint and matters of public record.").

results, determined they were subject to withholding in full, and informed Plaintiff of the same. Dkt. No. 37-5 (December 10, 2024 email from the FDIC stating the agency performed a search for the meeting minutes and reviewed the resulting 41 pages). That response is not a categorical denial. As a result, only one request (FOIA 1) underpins this claim, which is numerically insufficient to form the basis of a pattern and practice claim. *See Muttitt*, 813 F. Supp. 2d at 231; *Pub. Emps. for Env't Resp.*, 2006 WL 3422484, at *9.[18]

Even if this Court finds that FOIA 2 *was* a representative example, Plaintiff's alleged practice still only relies on two requests. Dkt. No. 37 ¶ 93. Caselaw in this district advises that two examples are insufficient to plead numerosity. *See Khan*, 2023 WL 6215359, at *7 (finding agency's failure to respond to two requests numerically insufficient to constitute a pattern); *see also CREW*, 772 F. Supp. 3d at 9 ("[T]wo instances of challenged conduct by a single component . . . likely insufficient to establish a consistent policy or practice.").

b. FOIAs 1 and 2 Sought Different Information and Received Different Treatment.

FOIAs 1 and 2 also are too dissimilar to plausibly allege a practice. *See CREW*, 772 F. Supp. 3d at 16.

First, FOIAs 1 and 2 sought different types of information rather than a "narrowly[] defined class of documents." *CREW*, 772 F. Supp. 3d at 12.[19] FOIA 1 sought a specific type of external

[18] Notably and unlike FOIA 1, FOIA 2 was remanded following an administrative appeal to FDIC staff to reassess its initial determination. Dkt. No. 37-6. FOIA 2 remains on administrative remand at the time of this filing. To consider it as an example of this policy or practice claim would result in "premature interference with agency processes, to give the parties and the courts [the] benefit of the agency's experience and expertise and to compile an adequate record for review." *Wilbur v. CIA*, 355 F.3d 675, 677 (D.C. Cir. 2004) (per curiam).

[19] *Compare Payne*, 837 F.2d at 491 (seeking bid abstracts for almost two years); *Newport Aeronautical Sales*, 684 F.3d at 164 (seeking 155 technical orders regarding military equipment); and *Jud. Watch, Inc.*, 895 F.3d at 773 (seeking VIP travel expenses) *with Am. Ctr. for L. & Just.*,

communication from the FDIC to the banks it regulates that is authored by specific FDIC practice groups and maintained in the FDIC's RADD database. These types of records typically contain information exempt from disclosure pursuant to FOIA Exemptions 4, 6 and 8 because the records are related to the supervision and regulation of financial institutions. Dkt. No. 37-2 (FDIC's Initial Response to FOIA 1). Meanwhile, FOIA 2 sought a specific charter and meeting minutes for an interdivisional crypto asset risk working group at the FDIC. Foundational and record-keeping documents regarding the deployment of a cross-divisional working group would reside in an internal FDIC SharePoint site and raise deliberative process issues under Exemption 5 as well as separate issues under Exemption 8. Dkt. No. 37-6. Thus, FOIAs 1 and 2 sought fundamentally different records and are not sufficiently similar merely because each happens to make high-level references to crypto or digital assets. *See, e.g.*, *Am. Ctr. for L. & Just.*, 470 F. Supp. 3d at 7-8 (rejecting requestor's attempt to "describe the FBI's behavior at a higher level of generality" for "three novel kinds of requests").

Second, because the requests were dissimilar, the FDIC took different approaches to processing each one. The FDIC categorically denied FOIA 1 at the initial and administrative appeal stage. During the course of this lawsuit, however, the FDIC performed a new, broader search and discretionarily released over 200 records with minimal redactions pursuant to FOIA Exemptions 4, 6, and 8. By contrast, FOIA 2 was released in part and denied in part after the FDIC searched for and reviewed potentially responsive records. The initial determination (a partial withholding under FOIA Exemptions 5 and 8), was then remanded for segregability and

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470 F. Supp. 3d at 6 (dismissing plaintiff's policy or practice claim for failure to state a claim because it rested on three dissimilar requests—records of a meeting between a former President and the Attorney General, records relating to possible criminal charges against a former Secretary of State, and all the emails of a former FBI director within a particular period).

foreseeability considerations at the appeal stage. *See supra* p. 5. Thus, FOIAs 1 and 2 do not exhibit the same reflexive "application of a particular exemption" or "employment of the same non-responsive conduct" needed to establish a practice. *See CREW*, 772 F. Supp. 3d at 12; *Am. Ctr. for L. & Just.*, 470 F. Supp. 3d at 7-8 (finding "an agency policy or practice has never been inferred from such a diversity of conduct").[20]

c. Plaintiff Fails to Plausibly Allege that the FDIC's Alleged Categorical-Denial Practice Is Unlawful.

Finally, Plaintiff fails to sufficiently allege that the FDIC's purported categorical-denial practice is unlawful—i.e., that it fails "to abide by the terms of the FOIA." *Khan*, 2023 WL 6215359, at *7. To meet this legal requirement, the practice at issue must be unlawful and contrary to "binding precedent." *CREW*, 772 F. Supp. 3d at 14. There is no binding precedent in this Circuit disapproving of Exemption 8 categorical denials. On the contrary, the D.C. Circuit has repeatedly emphasized the Exemption's breadth. *Gregory*, 631 F.2d at 898; *Consumers Union*, 589 F.2d at 533. District-court precedent also explicitly permits categorical denials based on Exemption 8. *Pub. Invs.*, 930 F. Supp. 2d at 71-72 (sustaining categorical withholding of material under Exemption 8; "[T]his case is a paradigmatic example of a situation in which a document-by-document *Vaughn* index is unnecessary because the scope of the plaintiff's FOIA request necessarily renders all potentially responsive materials exempt from disclosure under Exemption 8."). And more generally, the Supreme Court has ruled categorical denials under FOIA are permissible on multiple occasions. *See DOJ v. Reps. Comm. for Freedom of Press*, 489 U.S. 749,

[20] The FDIC invoked Exemption 8 in 1.83% of responses to processed FOIA requests in 2024 and between 3.39% and 5.58% in response to processed FOIA requests between 2018 and 2023. These annual statistics are available in the FDIC's FOIA Annual Reports, which are available on the FDIC's website at https://www.fdic.gov/foia/foia-reports. The FDIC's website includes the FDIC's FOIA Annual Reports for fiscal years 2012 to 2024.

777 (1989) (holding that "a categorical balance may be undertaken" for an "appropriate class of law enforcement records or information"); *FTC v. Grolier, Inc.*, 462 U.S. 19, 27-28 (1983) (stating "[o]nly by construing the exemption to provide a categorical rule can the Act's purpose of expediting disclosure by means of workable rules be furthered."); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 241 (1978) (finding that an entire category of documents—witness statements related to administrative enforcement proceedings—can be exempt from disclosure under FOIA). This caselaw remains undisturbed today.

3. Plaintiff Fails to Adequately Allege a Practice of the FDIC Narrowly Construing FOIA Requests.

a. Plaintiff's Alleged Narrow-Construction Practice Fails to Plausibly Allege Numerosity.

As a preliminary matter, it is unclear how Plaintiff's third alleged unlawful practice—narrow construction of FOIA requests—differs from Plaintiff's alleged improper search practice (discussed *infra* pp. 40-42). Presumably, too narrowly construing a request must result in an improper search, or else there would be no actionable FOIA violation. But even assuming these are somehow different practices (instead of different ways of describing the same practice), the Amended Complaint relies, again, on too few and too dissimilar examples. Dkt. No. 37 ¶ 96.

Plaintiff cites two examples—FOIAs 1 and 3—in alleging that the FDIC has a practice of narrowly construing FOIA requests. Again, two examples are too few to establish numerosity in a policy or practice claim. *See CREW*, 772 F. Supp. 3d at 16; *Khan*, 2023 WL 6215359, at *7. Moreover, the second example, FOIA 3, was never administratively appealed. If Plaintiff believed the FDIC's no-record responses indicated that the agency had improperly construed its request, it was free to administratively appeal on those grounds pursuant to 5 U.S.C. § 552(a)(6)(A) and 12 C.F.R. § 309.5(i)(2), giving the FDIC "an opportunity to exercise its discretion and expertise on the matter and to make a factual record to support its decision." *Khine v. U.S. Dep't of Homeland*

Sec., 334 F. Supp. 3d 324, 333 (D.D.C. 2018) (citation omitted). But Plaintiff failed to do so, and the time for appealing has now passed. Consequently, Plaintiff's decision to forego administrative review—as well as district-court review, 5 U.S.C. § 552(a)(6)(C)(i) (excusing exhaustion under limited, time-dependent circumstances)—supports dismissal.

b. FOIAs 1 and 3 Sought Different Information and Received Different Treatment.

FOIAs 1 and 3 also are dissimilar. First, the requests sought different records. FOIA 1 sought supervisory correspondence from the FDIC to the banks it regulates regarding crypto-related activities. *See supra* pp. 1-4 (discussion on FOIA 1). Meanwhile, FOIA 3 sought all documents and communications between the FDIC and eight governmental agencies about a blog post entitled "The Administration's Roadmap to Mitigate Cryptocurrencies' Risks." Dkt. No. 37-7. FOIA 1 required a search of the RADD Correspondence Folder—the FDIC's official repository for supervisory communication between the agency and financial institutions. FOIA 3 required an email records search for custodians likely to send or receive such a blogpost.

Second, FOIAs 1 and 3 received different treatment. The FDIC categorically denied FOIA 1 under Exemptions 4 and 8 but later conducted a broader search and discretionarily released more than 800 pages with minimal redactions. By contrast, the FDIC found no records in response to FOIA 3, and Plaintiff did not appeal that finding. Just like the requests underlying the alleged categorical-denial practice, the two requests underlying this alleged practice differed in subject, stakeholders, and treatment by the FDIC and, as such, are insufficient to allege an actionable practice claim. *See, e.g.*, *CREW*, 772 F. Supp. 3d at 17 ("doom[ing]" plaintiff's claim of "pattern or practice" against the FBI based on three requests with non-uniform treatment).

4. Plaintiff Fails to Adequately Allege a Practice of the FDIC Improperly Searching for Records.

a. Plaintiff Does Not Meet the Numerosity Requirement.

At first glance, Plaintiff's Amended Complaint alleges four examples where the FDIC purportedly "fail[ed] to search for all records within [its] custody or control." Dkt. No. 37 ¶¶ 99-101. Plaintiff failed, however, to exhaust its administrative remedies for two of its four examples—FOIAs 3 and 5. For those requests, Plaintiff received no-record responses. *See supra* pp. 5-6. If Plaintiff believed those responses indicated improper searches, it had 90 days to administratively appeal on those grounds pursuant to 5 U.S.C. § 552(a)(6)(A). That route would have given the FDIC "an opportunity to exercise its discretion and expertise on the matter and to make a factual record to support its decision." *Khine*, 943 F.3d at 964 (quoting *Oglesby*, 920 F.2d at 61). Had Plaintiff followed the process here, both it and this Court would have had informed agency decisions on defined topics amenable to potential pre-litigation tailoring and resolution. But Plaintiff chose not to do so. Plaintiff's failure to exhaust administrative remedies on FOIAs 3 and 5 warrants dismissal of the alleged improper-search practice claim on jurisprudential grounds[21]—Plaintiff should not be allowed to use unexhausted FOIA requests as a stratagem for bolstering an otherwise numerically deficient policy or practice claim. *See Dettmann*, 802 F.2d at 1472, 1477 (*sua sponte* dismissing a policy or practice claim for failure to exhaust administrative remedies); *see also Khine*, 334 F. Supp. 3d at 334.

In sum, the Amended Complaint offers one example of an allegedly improper search that Plaintiff no longer contests (FOIA 1) and one that is still before the agency (FOIA 4). Plaintiff's two other examples (FOIAs 3 and 5) were not exhausted. Thus, as a threshold matter, Plaintiff has

[21] Plaintiff had 90 days to administratively appeal the FDIC's initial determinations in response to FOIA 3 and FOIA 5—by April 28, 2024 and December 15, 2024, respectively—but elected not to do so.

not satisfied the numerosity requirement required to establish a practice that the FDIC fails to conduct adequate searches in response to FOIA requests. *See supra* pp. 27-28. Therefore, Plaintiff fails to state a claim upon which relief may be granted.[22]

b. FOIAs 1, 3, 4 and 5 Sought Different Information.

Even if Plaintiff met the requirement of numerical sufficiency, these four examples are too dissimilar to allege a practice. FOIAs 1, 3, 4, and 5 sought different information and materials. For a practice to be "substantively sufficient," the court looks to whether the agency "[applies] a particular exemption" or "[employs] the same non-responsive conduct" "to a particular category of documents." *CREW*, 772 F. Supp. 3d at 12 (cleaned up). In short, the court tries to determine whether the agency treats similar requests in a similar way. Plaintiff maintains that these four FOIAs are similar requests because they all pertain to digital assets or crypto. Dkt. No. 37 ¶ 101. But again, such high-level references—standing alone—do not make them sufficiently similar. *See supra* pp. 32-34 (discussing *Am. Ctr. for L. & Just.*, 470 F. Supp. 3d at 7).

Specifically, these requests involve different types of records, record systems, and stakeholders. *Am. Ctr. for L. & Just.*, 470 F. Supp. 3d at 6-7 (analyzing similarity of requests as relevant in assessing policy or practice claim and finding that plaintiff's three "strikingly different" requests did not "allow the required inference" of a pattern of violative FOIA conduct). As previously discussed, FOIA 1 sought a specific type of external communication from the FDIC to

[22] Courts classify administrative exhaustion as a "jurisprudential doctrine" that bars premature judicial review. *E.g.*, *Bonner v. Social Sec. Admin.*, 574 F. Supp. 2d 136, 138-39 (D.D.C. 2008). But courts also note that a plaintiff's failure to exhaust administrative remedies in FOIA cases "is *not* a mere technicality," *Nat'l Sec. Couns. v. CIA*, 931 F. Supp. 2d 77, 99-100 (D.D.C. 2013), and "is treated as an element of a FOIA claim," *Bonner*, 574 F. Supp. 2d at 139. Reflecting this, courts have granted motions to dismiss a plaintiff's policy or practice claim for failure to exhaust administrative remedies where the government moved under both Rules 12(b)(1) and 12(b)(6). *See Khine*, 334 F. Supp. 3d at 331. The same approach applies to Plaintiff's policy or practice claim in this case.

the banks it regulates pertaining to financial institutions' implementation or expansion of crypto-related activities. Supervisory communication of this nature is authored by specific FDIC practice groups (e.g., the Divisions of Risk Management Supervision and Depositor and Consumer Protection), is maintained in the FDIC's RADD database, and typically consists of information exempt from disclosure pursuant to FOIA Exemptions 4, 6 and 8 because the records are related to the supervision and regulation of financial institutions. Dkt. No. 37-2 (FDIC's Initial Response to FOIA 1). Meanwhile, FOIA 3 sought inter-agency discussions between the FDIC and eight state and federal regulators regarding a blog post, FOIA 4 sought a joint statement on liquidity risks, and FOIA 5 sought a Section 9(13) statement issued by the Federal Reserve. These types of FOIAs would require varying types of email-records searches for custodians most likely to send or receive each respective document, not RADD searches. Thus, Plaintiff's examples are not the type of "*repeated requests* for a *narrowly defined class of documents*" that establish a pattern. *Compare CREW*, 772 F. Supp. 3d at 12 (emphasis added) *with Payne*, 837 F.2d at 491; *Newport Aeronautical Sales*, 684 F.3d at 164; and *Jud. Watch, Inc.*, 895 F.3d at 773.

c. FOIAs 1, 3, 4, and 5 Received Different Treatment.

Further, the FDIC treated the four requests differently, with responses ranging from a categorical denial (FOIA 1) to a partial release, administrative remand, and referral to other agencies (FOIA 4), to responses stating that no records were found (FOIA's 3 and 5). In FOIA 1, the agency categorically denied the request at the administrative level. This treatment was different than the FDIC's treatment of FOIA 4, where the FDIC searched for and released, in part, 28 pages with redactions pursuant to FOIA Exemptions 5, 7(e), and 8. Dkt. No. 37-9. Moreover, some FOIA 4 records belonged to other agencies and were referred to those agencies for review and a direct response to Plaintiff. *Id.* Following Plaintiff's administrative appeal of FOIA 4, the FDIC

remanded the request to FDIC staff to reconsider whether there is additional non-exempt material that is reasonably segregable in the 28 pages. FDIC's Response to Plaintiff's FOIA 4 Administrative Appeal (Nov. 27, 2024), Exhibit 8. The FDIC found no records responsive to FOIAs 3 and 5, Dkt. No. 37-11, and Plaintiff elected not to administratively appeal them. In *CREW*, the court found that an agency's similarly varied treatment toward different FOIA requests "doom[ed]" the plaintiff's policy or practice claim. 772 F. Supp. 3d at 16 (rejecting policy or practice claim because the agency's responses to the plaintiff's three FOIA requests "were not uniform"). The same result holds here.

d. Plaintiff Fails to Adequately Allege How the FDIC's Search Practices Demonstrated a "Failure to Abide by the Terms of the FOIA."

Finally, even if this Court found that Plaintiff adequately alleges numerosity and similarity (it does not), Plaintiff also fails to allege *how* these four examples (FOIAs 1, 3, 4, & 5) violated FOIA. Plaintiff maintains that the FDIC's practice is unlawful because Plaintiff received documents late (FOIA 1), received too few or no documents (FOIAs 3, 4, and 5), and received no documents from platforms like Microsoft Teams. Dkt. No. 37 ¶¶ 99-101. In other words, Plaintiff asks this Court to infer that the FDIC's search was unlawful because it was not done to their liking and did not yield their anticipated results.

This ends-over-means approach is not the measure of a proper search. *Watkins L. & Advoc., PLLC*, 78 F.4th at 444 (rejecting requestor's argument that search was improper because it did not include requestor's preferred search terms); *Clemente v. FBI*, 867 F.3d 111, 118 (D.C. Cir. 2017) (rejecting requestor's argument that search was improper when it "did not produce certain materials [requestor] believes exist and had hoped to find" because "FOIA is not a wishing well; it only requires a reasonable search for records an agency actually has" (citation omitted)). The law states that an agency must undertake a search that is "reasonably calculated to uncover all

relevant documents." *Weisberg v. DOJ*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). The agency need not search "every record system" for the requested documents when searching those other systems is unlikely "to turn up the information requested." *Oglesby*, 920 F.2d at 68. Nor must the agency's search be perfect. *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986). Rather, the agency must show that it "conduct[ed] a good faith, reasonable search of those systems of records likely to possess the requested records." *Pinson v. DOJ*, 177 F. Supp. 3d 56, 80 (D.D.C. 2016) (quoting *Marino v. DOJ*, 993 F. Supp. 2d 1, 9 (D.D.C. 2013)). Moreover, the adequacy of a FOIA search "is generally determined not by the fruits of the search, but the appropriateness of the methods used to carry out the search." *Watkins L. & Advoc., PLLC.*, 78 F.4th at 444 (citation omitted). Finally, "by the time a court considers the matter, it does not matter that an agency's initial search failed to uncover certain responsive documents so long as subsequent searches captured them." *See Hodge*, 703 F.3d at 580 (emphasis omitted).

Here, the Amended Complaint focuses on the FDIC's initial response to FOIA 1 even though Plaintiff no longer challenges the FDIC's initial search. Even if the Court inferred that the FDIC's subsequent FOIA 1 search was improper, Plaintiff still has alleged no facts that the FDIC's searches for FOIAs 3, 4, and 5 were also unlawful—other than to insist that the fruits of those searches meant they had to be unlawful. Dkt. No. 37 ¶ 101. Courts in this district have repeatedly rejected this inference as conclusory and improper. *PETA, Inc. v. Bureau of Indian Affs.*, 800 F. Supp. 2d 173 (D.D.C. 2011) (rejecting the argument that the Bureau had a pattern or practice of conducting improper searches based on a fruitless search); *Boggs v. United States*, 987 F. Supp. 11, 20 (D.D.C. 1997) (noting that the role of the court is to determine the reasonableness of the search, "not whether the fruits of the search met plaintiff's aspirations."); *see also Murray v. Lappin*, No. 09-00992 DAR, 2011 WL 3438883, at *4 (D.D.C. Aug. 5, 2011) ("A plaintiff's

speculation as to the existence of additional records responsive to a FOIA request, absent support for his allegations of agency bad faith, does not render an agency's search inadequate."); *Elliott v. U.S. Att'y Gen.*, No. 06-1128, 2006 WL 3191234, at *2-3 (D.D.C. Nov. 2, 2006) (concluding that an agency "conducted a search that was reasonable" even though no records were located); *Accuracy in Media, Inc. v. Nat'l Transp. Safety Bd.*, No. 03-00024, 2006 WL 826070, at *6 (D.D.C. Mar. 29, 2006) (finding meritless argument that "search was *ipso facto* inadequate" because no records were found).

Plaintiff offers no other facts in support of its claim that the FDIC's searches for FOIAs 3, 4, and 5 were unlawful, further warranting dismissal of its improper search claim on plausibility grounds. *See Twombly*, 550 U.S. at 547.

B. Count II Should be Dismissed Pursuant to Fed. R. Civ. P. 12(b)(1).

Alternatively, Count II is also unripe and should be dismissed for lack of subject matter jurisdiction. Courts evaluating ripeness look to "the fitness of the issues for judicial decision" and "the hardship to the parties of withholding court consideration." *VanderKam*, 776 F.3d at 888 (citation omitted). Neither criterion favors Plaintiff.

1. Plaintiff's Claim Is Not Fit for Judicial Decision.

Factors bearing on the fitness of an issue for decision include "whether consideration of that issue would benefit from a more concrete setting, and whether the agency's action is sufficiently final." *Ciba-Geigy Corp.*, 801 F.2d at 435. Neither factor supports a finding that the issues here are fit for judicial decision.

As a preliminary matter, Count II relies in part on two requests currently on administrative remand to FDIC staff for further consideration: FOIA 2 (which Plaintiff cites in support of its allegations regarding categorical denials) and FOIA 4 (which Plaintiff cites in support of its

allegations regarding improper searches). Because the FDIC's processing of these requests remains ongoing, the agency's application of alleged "policies" or "practices" to these requests remains unsettled and the records available for this Court's review are incomplete. *See Ciba-Geigy Corp.*, 801 F.2d at 435. When viewed alongside FOIAs 3 and 5—which, again, Plaintiff chose not to challenge or administratively appeal within the appropriate timeframes—facts have not developed to the point that Plaintiff can identify a sufficient number of past examples to support a policy or practice claim. *See John Doe, Inc. v. DEA*, 484 F.3d 561, 567 (D.C. Cir. 2007) ("Finality, ripeness, and exhaustion of administrative remedies are related, overlapping doctrines that are analytically but not categorically distinct.").

Faced with the absence of sufficient past examples, the Amended Complaint repeatedly relies on Plaintiff's supposed apprehension that the agency maintains policies or practices that *may* lead to future noncompliance. Dkt. No. 37 ¶¶ 124 (alleging Plaintiff "will continue to be harmed in the future" and "has pending and soon-to-be-submitted FOIA requests with FDIC that are likely to be subject to the FDIC's unlawful policies or practices"); 104 (insinuating document destruction in other pending FOIA). The D.C. Circuit, however, has previously rejected such an amorphous basis for a FOIA policy or practice claim in *Cause of Action Institute v. U.S. Department of Justice*, 999 F.3d 696 (D.C. Cir. 2021). In that case, the plaintiff challenged a Justice Department practice of subdividing documents into multiple "records" and withholding nonresponsive information when that information was not covered by an exemption. The D.C. Circuit found the challenge unripe, stating that it could not conclude that the policy complained of "cannot be lawful under any circumstances." *Id.* at 704. The court continued:

> The operation of FOIA is better grasped when viewed in light of a particular application. Here, as is often true, determination of the scope [of the purported policy] in advance of its immediate adverse effect in the context of a concrete

> case involves too remote and abstract an inquiry for the proper exercise of the judicial function.

Id. at 704-05 (citations and alterations omitted).

Here, the four alleged practices are too broad to assess in the abstract. Take, for example, the theoretical, future blanket applications of Exemption 8, Dkt. No. 37 ¶¶ 93-95, narrow constructions of FOIA requests, *id.* ¶¶ 96-98, and/or inadequate search practices, *id.* ¶¶ 99-101. There plainly are situations where Exemption 8 is properly applied broadly.[23] Likewise, there are situations where an agency lawfully construes a FOIA request more narrowly than a requester would prefer[24] or pursues a reasonable search approach with which the requester disagrees.[25] Finally, the FDIC's document preservation practices, Dkt. No. 37 ¶¶ 99-105, cannot be said to be universally unlawful, even if Plaintiff subjectively believes those practices may not ensure adequate preservation in every case.

Further, the four alleged practices depend on future events that may never come to pass. For example, FOIAs 2 and 4 are still on administrative remand and Plaintiff cannot know the

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[23] *See, e.g.*, *Jurdi*, 485 F. Supp. 3d at 92 ("The Supreme Court and D.C. Circuit have 'made it clear that rules exempting whole groups of records from disclosure are not only permitted, but should be encouraged as a means of enabling agencies to meet their formidable FOIA obligations in a timely fashion.'"); *Boyd*, 87 F. Supp. 3d at 71 (finding the agency's "categorical denials were appropriate in this case, and so its failure to search for records . . . does not undermine the overall adequacy of its search").

[24] "An agency may decide to limit the scope of an ambiguous request as long as the narrowed scope is a reasonable interpretation of what the request seeks." *Wilson v. U.S. Dep't of Transp.*, 730 F. Supp. 2d 140, 154 (D.D.C. 2010); *see, e.g.*, *Mogenhan v. Dep't of Homeland Sec.*, No. 06-2045, 2007 WL 2007502, at *3 (D.D.C. July 10, 2007) (holding reasonable an agency determination that a request for an investigative file did not include the employment file).

[25] In *PETA, Inc. v. Bureau of Indian Affairs*, 800 F. Supp. 2d 173, 182 (D.D.C. 2011), the Court rejected a similar policy or practice claim resting on a single search failure: "[t]he fact that the agency has been unable to explain why its second search was not fruitful does not detract from the Court's conclusions nor does it permit the argument that defendant has engaged in a pattern or practice of not conducting adequate searches."

outcome of those remands. Although Plaintiff may argue that the agency is trying to manufacture a ripeness issue by using dilatory tactics during its administrative review process, it is not.[26] Further, the remand shows that the administrative process is working as intended. To accept Plaintiff's argument "would work mischief in the future by creating a disincentive for an agency to reappraise its position, and when appropriate, release documents previously withheld." *Meeropol*, 790 F.2d at 953 (citation omitted). Plaintiff cannot know whether the FDIC will treat FOIA 2, FOIA 4, or any of Plaintiff's future FOIA requests improperly. *Cf. Eddington v. DOD*, 35 F.4th 833, 838 (D.C. Cir. 2022) (according presumption of good faith to agency's declaration). A claim premised on future events is not concrete and therefore is not ripe for adjudication if it posits "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas*, 523 U.S. at 300 (citation omitted).

2. Withholding Adjudication Will Not Harm Plaintiff.

Finally, withholding adjudication on Plaintiff's abstract claims will not result in hardship. Indeed, FOIAs 2 and 4 may simply complete the administrative appeals process to receive the relief Plaintiff seeks. If Plaintiff is unsatisfied with the results of an administrative appeal, it may exhaust the remedies afforded to it under FOIA. *See, e.g.*, *Cause of Action Inst.*, 999 F.3d at 705 (finding the "burden of having to file another suit . . . hardly the type of hardship which warrants immediate consideration of an issue presented in abstract form." (citations omitted)).

For the foregoing reasons, the Court should dismiss Count II pursuant to Federal Rule 12(b)(1).

[26] Notably, the FDIC has experienced more than a 300% increase in FOIA requests in just 3 years (between 2021 and 2024) due in large part to 3 significant bank failures in the Spring of 2022. *Compare* 2021 FOIA Annual Report *with* 2024 FOIA Annual Report at https://www.fdic.gov/foia/foia-reports.

DATED: July 9, 2025

Respectfully submitted,

Andrew J. Dober, D.C. Bar No. 489638
Senior Counsel

/s/Lina Soni
Lina Soni, D.C. Bar. No. 503298
Counsel
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3501 Fairfax Drive, VS-D7050
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Fax: (703) 562-2477
Email: lsoni@fdic.gov

Counsel for Defendant Federal Deposit Insurance Corporation

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2025, I caused a true and correct copy of the foregoing to be filed with the Clerk for the U.S. District Court for the District of Columbia through the ECF system. Participants in the case who are registered ECF users will be served through the ECF system, as identified by the Notice of Electronic Filing.

/s/ Lina Soni
Lina Soni

Counsel for Defendant Federal Deposit Insurance Corporation

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HISTORY ASSOCIATES INCORPORATED
7361 Calhoun Place, Suite 310
Rockville, MD 20855

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION,
550 17th Street, NW
Washington, D.C. 20429

Defendant.

Case No. 1:24-cv-1857-ACR

FDIC'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE ON COUNT I

In support of the FDIC's Motion for Summary Judgment on Count I of Plaintiff History Associates Incorporated's ("Plaintiff") Amended Complaint, and pursuant to Local Civil Rule 7(h)(1) and this Court's Standing Order, Dkt. No. 6 at 7(j), Defendant Federal Deposit Insurance Corporation ("FDIC") respectfully submits this Statement of Material Facts, which the FDIC contends are not in genuine dispute.

FDIC Statement of Material Fact	HAI Response
1. On November 8, 2023, Plaintiff History Associates Inc. ("Plaintiff") submitted a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA") to the Federal Deposit Insurance Corporation ("FDIC"). Dkt. No. 37 ¶ 56; Decl. 1 ¶ 9.	

2. Plaintiff's FOIA request sought: Copies of all "pause letters" described in the attached October 2023 FDIC Office of Inspector General report titled "FDIC Strategies Related to Crypto-Asset Risks" Dkt. No. 37-2, p.1; Decl. 1 ¶ 9.	
3. As described in the OIG Report, the FDIC sent those "pause letters" between "March 2022 and May 2023" as part of the FDIC's "review of financial institutions' crypto-related activities[.]" Dkt. No. 37-3 at p. 3; Exhibit 3 at p. 5.	
4. On January 22, 2024, the FDIC denied Plaintiff's November 8, 2023 FOIA request. Dkt. No. 37-2, p. 1; Decl. 1 ¶ 9.	
5. On March 25, 2024, Plaintiff administratively appealed the FDIC's denial. Dkt. No. 37 ¶ 59; Decl. 1 ¶ 10; Exhibit 1.	
6. By letter dated May 8, 2024, the FDIC denied Plaintiff's administrative appeal. Dkt. No. 37 ¶ 62; Decl. 1 ¶ 10.	
7. Plaintiff filed suit in this Court on June 27, 2024 to compel release of the requested documents. Dkt. Nos. 1, 37 ¶ 65.	
8. The FDIC filed its answer on August 7, 2024. Dkt. No. 13.	
9. In its November 4, 2024 Minute Order, the Court ordered the FDIC to "review the 23 pause letters to determine what portions should be redacted and to produce the redacted letters to Plaintiff by November 22, 2024." November 4, 2024 Minute Order.	

10. Pursuant to this Court's November 4, 2024 Minute Order, the FDIC reviewed the 23 "pause letters" to determine whether any portion of the letters could be segregated and released. The FDIC discretionarily released 23 redacted letters to Plaintiff's counsel on November 22, 2024. Dkt. No. 26-1.	
11. On December 12, 2024, following an *in camera* review of four letters, the Court ordered the FDIC "to re-review the documents" and release them with new redactions to Plaintiff by January 3, 2025. December 12, 2024 Minute Order.	
12. The FDIC re-reviewed the original 23 "pause letters" and two additional letters and discretionarily released all 25 letters with revised redactions to Plaintiff's counsel on January 3, 2025. Dkt. No. 27-2.	
13. FDIC leadership changed following the change in administrations. *See, e.g.*, Statement from Acting Chairman Travis Hill, FDIC (Jan. 21, 2025), https://www.fdic.gov/news/press-releases/2025/statement-acting-chairman-travis-hill.	
14. The FDIC performed numerous searches for documents related to its supervision of crypto-related activities. Decl. 1 ¶¶ 19-22, 24-25; Dkt. Nos. 38 ¶¶ 11, 13-16; 44 ¶¶ 7-8; and 48 ¶¶ 21-22.	
15. These searches were conducted in the Regional Automated Document Distribution Application ("RADD"). Decl. 1 ¶¶ 19, 24.	
16. RADD is a document imaging, routing, and storage system that captures, indexes, distributes, and electronically stores supervisory business records for covered institutions. Decl. 1 ¶ 19.	

17. The RADD is the official recordkeeping system for supervisory business records such as bank correspondence. Decl. 1 ¶ 20.	
18. RADD records are subject to a 30-year retention schedule (with some exceptions not relevant here), backed up daily, and retrievable, if necessary, when deleted from the RADD. Decl. 1 ¶ 21; Exhibit 7 at p.2.	
19. On February 5, 2025, the FDIC made a discretionary release of 175 records to the FDIC FOIA Reading Room. *FOIA Reading Room*, FDIC (last visited July 9, 2025), https://www.fdic.gov/foia/foia-reading-room ("FDIC FOIA Reading Room").	
20. On February 21, 2025, the FDIC discretionarily released 8 additional records to the FDIC FOIA Reading Room. FDIC FOIA Reading Room.	
21. On March 14, 2025, the FDIC re-released its February 21 release with fewer redactions and discretionarily released two more records to the FDIC FOIA Reading Room. FDIC FOIA Reading Room.	
22. On March 14, 2025, the FDIC advised Plaintiff that it had completed its releases in response to its FOIA requests. Dkt. No. 48-1; Decl. 1 ¶ 18.	
23. At a May 29, 2025, hearing the Court inquired "do you have all the documents now that you claim you should have from the original FOIA request?" To which Plaintiff's counsel responded: "as to Count 1, I think they've -- we do not dispute that they provided the full universe of documents." And later in a further response to the Court, Plaintiff's counsel added: "I think -- in terms of responsive to our pause letter request, yeah, I think we do have the full -- we think the full universe of documents." May 29, 2025 Hearing Transcript at 18:6-10 and 23:10-15, Exhibit 4 (transcript excerpts).	

24. In the aggregate, the FDIC discretionarily released more than 800 pages totaling over 200 records. Decl. 1 ¶ 13; FDIC FOIA Reading Room.	
25. In these records, the FDIC redacted information pursuant to Exemptions 4, 6, and 8. Dkt. Nos. 28 ¶ 2; 44 ¶ 10, 48 ¶ 21; Decl. 1 ¶ 17.	
26. Redactions applied under FOIA Exemption 4 and 8 include information that would: (a) identify a particular bank; (b) identify third-parties with which a bank had entered into or was considering entering into a business relationship; or (c) divulge confidential commercial information about a bank or third-party. Decl. 1 ¶ 28.	
27. Examples of redactions applied under Exemptions 4 and 8 include: (a) bank names, bank logos, and other information that, alone or in combination with other information, could reasonably reveal an institution's identity, (b) bank-specific business relationships with third parties—actual or contemplated, and (c) records containing information submitted by banks to the FDIC in the course of the FDIC's supervisory activity, including confidential commercial information. Decl. 1 ¶ 28.	
28. Public disclosure of information redacted under Exemptions 4 and 8 would increase the likelihood of revealing the identity of banks and third-parties with which banks were engaged. Decl. 1 ¶ 30; Decl. 2 ¶ 6; Decl. 3 ¶ 6.	
29. At least one entity has utilized artificial intelligence to analyze the productions in this case to identify (but not disclose) the underlying banks. Decl. 1 ¶ 31.	

30. Public disclosure of information redacted under Exemptions 4 and 8 would foreseeably harm the FDIC's supervisory relationships with banks. Decl. 1 ¶ 31; Decl. 2 ¶¶ 4-7; Decl. 3 ¶¶ 4-7.	
31. Redactions applied under FOIA Exemption 6 included information pertaining to individuals, personal information, signatures, and work cell phone numbers. Decl. 1 ¶ 29.	
32. Public disclosure of the information redacted under Exemption 6 would foreseeably harm individuals by revealing their personal privacy information. Decl. 1 ¶ 29, 32.	
33. All reasonably segregable, non-exempt responsive information subject to FOIA has been produced to the Plaintiff. Decl. 1 ¶ 28; Decl. 2 ¶¶ 5-7; Decl. 3 ¶¶ 5-7.	

Dated July 9, 2025

Respectfully submitted,

Andrew J. Dober, D.C. Bar # 489638
Senior Counsel

/s/ Briena L. Strippoli
Briena L. Strippoli, MD Bar # 0612130372
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Attorneys for the FDIC

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2025, I caused a true and correct copy of the foregoing to be filed with the Clerk for the U.S. District Court for the District of Columbia through the ECF system. I hereby further certify that a true and correct copy of this motion and its attachments were served upon Plaintiff's counsel by UPS overnight delivery sent on July 9, 2025, to the following address:

GIBSON, DUNN & CRUTCHER, LLP
1700 M Street NW
Washington, DC 20036
Attn: Denis Nicholas Harper

/s/ Briena L. Strippoli
Briena L. Strippoli

Hayden, Sarah E.

From: Josh Shear <JShear@historyassociates.com>
Sent: Monday, March 25, 2024 1:32 PM
To: EFOIA
Subject: [EXTERNAL MESSAGE] Freedom of Information Act Appeal - 2024-FDIC-FOIA-00083
Attachments: 2024 03 25 Appeal to FDIC (2024-FDIC-FOIA-00083).pdf; 2023 11 08 FOIA Request to FDIC.pdf; Attachment 1.pdf; 2024 01 22 Final Response Letter (2024-FDIC-FOIA-00083).pdf

Good afternoon,

Please find attached an appeal letter for FDIC FOIA Log No. 2024-FDIC-FOIA-00083.

I have also attached the original FOIA request to the FDIC dated November 8, 2023, as well as the publication "FDIC Strategies Related to Crypto-Asset Risks" dated October 2023, which references "pause letters" sent to banks, which is the subject of the original FOIA. Also attached is the FDIC's final response letter, dated January 22, 2024.

Please let me know if you have any questions.

Best,

Josh Shear

- - - - -

Josh Shear
Sr. Historian and Project Manager
Office: (240) 514-0925

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March 25, 2024

FOIA/PA Group
Legal Division
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Via Electronic Mail

Re: Freedom of Information Act Appeal – FOIA Log Number 2024-FDIC-FOIA-00083

To Whom It May Concern:

On January 22, 2024, Alisa N. Colgrove, Government Information Specialist, issued an adverse determination responding to the above-titled FOIA request. The request sought copies of all "pause letters" described in the October 2023 FDIC Office of Inspector General report titled "FDIC Strategies Related to Crypto-Asset Risks."

The January 22 letter states that the FDIC is withholding records that may be responsive to the request under the authority of 5 U.S.C. 552(b)(4), which exempts matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential," and 5 U.S.C. 552(b)(8), which exempts matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." The letter also states that "the information should be withheld because it is reasonably foreseeable that disclosure would harm an interest protected by an exemption described in subsection (b) of the FOIA, 5 U.S.C. § 552(b)."

History Associates, Inc. hereby appeals Ms. Colgrove's adverse determination pursuant to 5 U.S.C. § 552(a)(6) and 12 C.F.R. § 309.5(i).

FOIA was designed "to open agency action to the light of public scrutiny." *U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 142 (1989) (quotation omitted). Its purpose is "to provide for open disclosure of public information, and it has long been understood to create a strong presumption in favor of disclosure." *Pub. Citizen, Inc. v. Rubber Mfrs. Ass'n*, 533 F.3d 810, 813 (D.C. Cir. 2008) (citations omitted). Although disclosure obligations pursuant to FOIA are subject to certain exemptions, in light of FOIA's "goal of broad disclosure, these exemptions have been consistently given a narrow compass." *Tax Analysts*, 492 U.S. at 151; *see also Pub. Citizen*, 533 F.3d at 812 ("Although Congress enumerated nine exemptions from the disclosure requirement, these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act."). At all times, the burden is on the agency "to justify the withholding of any requested documents." *U.S. Dep't of State v. Ray*, 502 U.S. 164, 173 (1991).

Moreover, to the extent that any exemption may apply to a particular record, FOIA requires that an agency identify and produce any "reasonably segregable" non-exempt portions of the withheld record. 5 U.S.C. § 552(b). "The 'segregability' requirement applies to all documents and all exemptions in the FOIA." *Ctr. for Auto Safety v. E.P.A.*, 731 F.2d 16, 21 (D.C. Cir. 1984).

Finally, after the FOIA Improvement Act of 2016, an agency may not withhold records solely because an exemption enumerated in Section 552(b) applies. Instead, "FOIA now requires that an agency 'release a record—even if it falls within a FOIA exemption—if releasing the record would not reasonably harm an exemption-protected interest and if its disclosure is not prohibited by law.'" *Ctr. for Investigative Reporting v. U.S. Customs & Border Prot.*, 436 F. Supp. 3d 90, 105–06 (D.D.C. 2019); *see also* 5 U.S.C. § 552(a)(8)(A). That is "an independent and meaningful" requirement an agency must meet before withholding records. *Ctr. for Investigative Reporting*, 436 F. Supp. 3d at 106.

In denying the request, it appears that FDIC staff did not adhere to these fundamental principles of FOIA.

First, FDIC staff has failed to adequately show that the records responsive to the request are truly subject to the claimed exemptions for trade secrets and matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. The January 22 letter's "conclusory statemen[t]" that the records fall under Exemptions 4 and 8 does not satisfy the agency's burden of establishing with "reasonable specificity" that the requirements of the claimed exemption are met. *See, e.g.*, *Prison Legal News v. Samuels*, 787 F.3d 1142, 1147 (D.C. Cir. 2015). It also inhibits History Associates' ability to make effective arguments as to why the records requested should be made available and the reasons the adverse determination was in error. The agency cannot insulate its withholding of records from review by failing to provide a sufficiently detailed basis for invoking the exemption.

This failure is particularly problematic because the agency's stated rationales appear to be inapplicable to the pause letters. It's unclear, for example, how pause letters sent *by* the FDIC *to* banks can constitute "information obtained *from*" a bank. 5 U.S.C. § 552(b)(4) (emphasis added). The FDIC's conclusory statement that the pause letters fall within Exemption 8 fares no better. The purpose of Exemption 8 is to "address the concern that release of bank examination and operating reports could endanger the fiscal well-being of subject banks." *Pub. Invs. Arb. Bar Ass'n v. SEC*, 771 F.3d 1, 5 (D.C. Cir. 2014) (alterations omitted). But the pause letters appear to be form letters sent to banks; it is not clear that they contain *any* information from the banks themselves. And even if they did, the agency could simply redact the bank-specific information.

Second, even if some of the information in these records is properly exempted from disclosure pursuant to FOIA, FDIC staff still must identify and produce any "reasonably segregable" non-exempt portions of each withheld record. 5 U.S.C. § 552(b). FDIC Staff did not even assert that there is no non-segregable information. It is difficult to believe that none exists. For example, certain boilerplate portions of the pause letters are unlikely to constitute trade secrets or confidential information, and are not related to any particular report prepared by a financial institution, but would be directly responsive to the request for copies of the letters. Moreover, as explained above, the form letters could be segregated from the information about which banks received the letters.

Third, the FDIC staff has failed to demonstrate foreseeable harm, as required by Section 552(a)(8)(A). The January 22 letter states that "it is reasonably foreseeable that disclosure would harm an interest protected by an exemption," but that conclusory statement is insufficient. The FDIC staff "must identify specific harms to the relevant protected interests that it can reasonably foresee would actually ensue from disclosure of the withheld materials and "connect the harms in a meaningful way to the information withheld." *Ctr. for Investigative Reporting*, 436 F. Supp. 3d at 106 (cleaned up). "Boilerplate statements and generic and nebulous articulations of harm" do not suffice. *Id.* (cleaned up).

See also Leopold v. Dep't of Just., 2024 WL 875794, at *2 (D.C. Cir. Mar. 1, 2024) (applying this rule to Exemptions 4 and 8).

Finally, the FDIC did not provide History Associates with an estimate of the volume of withheld records, as required by 5 U.S.C. § 522(a)(6)(F).

Thank you for your consideration of this appeal. If you have any questions concerning this appeal or require additional information, please do not hesitate to contact me at (301) 279-9697 or via email at jshear@historyassociates.com.

Sincerely,

Josh Shear
Senior Historian
History Associates Incorporated

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HISTORY ASSOCIATES INCORPORATED, Plaintiff, v. FEDERAL DEPOSIT INSURANCE CORPORATION, Defendant.	Case No. 1:24-cv-1857-ACR

REDACTED DECLARATION OF [redacted] IN SUPPORT OF THE FDIC'S MOTION FOR SUMMARY JUDGMENT ON COUNT I

I, [redacted], pursuant to 28 U.S.C. § 1746, declare the following:

1. I am employed by the Federal Deposit Insurance Corporation (FDIC) [redacted]. I assumed the role of [redacted]. In this position, [redacted]. I also [redacted].

2. I submit this Declaration in support of the FDIC's Motion for Summary Judgment on Count I. The statements contained in this Declaration are based on my personal knowledge and upon information provided to me in my official capacity.

3. [redacted], I am familiar with the procedures followed by the FDIC when responding to requests for agency records under the FOIA.

4. I am specifically knowledgeable of Plaintiff History Associates Incorporated's (Plaintiff) FOIA requests that are at issue in this litigation and the corresponding searches conducted by the FDIC.

FDIC FOIA Statistics

5. The FDIC has experienced a significant increase in FOIA requests since Silicon Valley Bank and Signature Bank failed in March of 2023 and First Republic Bank failed in May of 2023.[1]

- For example, the FDIC received between 312 and 494 FOIA requests per fiscal year from 2018 to 2022. In fiscal year 2023, the FDIC received 826 FOIA requests. In fiscal year 2024, the FDIC received 1,028 FOIA requests.
- During the first two quarters of fiscal year 2025, the FDIC received 763 FOIA requests.[2]
- Reflecting this increase, the FDIC had a backlog of eight FOIA requests at the end of fiscal year 2022, 123 requests at the end of fiscal year 2023, and 252 requests at the end of fiscal year 2024.

[1] Unless otherwise noted, all annual statistics referenced in this Declaration are available in the FDIC's FOIA Annual Reports, which are available on the FDIC's website at https://www.fdic.gov/foia/foia-reports. The FDIC's website includes the FDIC's FOIA Annual Reports for fiscal years 2012 to 2024. Each fiscal year runs from October 1 to September 30. For example, the fiscal year for the FDIC's 2024 FOIA Annual Report is October 1, 2023 to September 30, 2024.

[2] *See* FDIC Quarterly Report Results, https://www.foia.gov/quarterly.html (search "Federal Deposit Insurance Corporation" in the "Agency or Component Name" field; then select "Received, processed, and backlogged FOIA requests" for the "Data Type" field; then select "2025" for the "Select Fiscal Years" field; then select "1" and "2" for the "Select Quarters" field; then click "View Report").

6. The FDIC's FOIA Annual Reports track the type and frequency of FOIA exemptions that the FDIC invokes each fiscal year. For example, the chart below summarizes the FDIC's invocation of FOIA Exemption 8 for requests processed from fiscal year 2018 to fiscal year 2024:

Fiscal Year	FOIA Requests Processed	FOIA Responses Invoking Exemption 8	% of Responses Invoking Exemption 8
2024	873	16	1.83%
2023	685	29	4.23%
2022	502	28	5.58%
2021	295	10	3.39%
2020	360	19	5.28%
2019	341	17	4.99%
2018	431	16	3.71%

7. The FDIC's FOIA Annual Reports do not include statistics for "categorical denials." Instead, these reports track the frequency with which the FDIC denied requests in full based on the invocation of a FOIA exemption(s). The chart below summarizes this information for FOIA requests processed from fiscal year 2018 to fiscal year 2024:

Fiscal Year	FOIA Requests Processed	Number of FOIA Requests Denied in Full Based on FOIA Exemption(s)	% of Requests Denied in Full
2024	873	47	5.38%
2023	685	38	5.55%
2022	502	23	4.58%
2021	295	17	5.76%
2020	360	16	4.44%
2019	341	24	7.04%
2018	431	33	7.66%

8. The FDIC's FOIA Annual Reports track the number of "no records" responses issued by the FDIC each fiscal year. The chart below summarizes this information for FOIA requests processed from fiscal year 2018 to fiscal year 2024:

Fiscal Year	FOIA Requests Processed	Number of "No Record" Denials	% of Requests With "No Record" Denials
2024	873	71	8.13%
2023	685	53	7.74%
2022	502	29	5.78%
2021	295	20	6.78%
2020	360	28	7.78%
2019	341	20	5.87%
2018	431	36	8.35%

Plaintiff's November 8, 2023 and January 16, 2025 FOIA Requests

9. Plaintiff submitted a FOIA request to the FDIC on November 8, 2023 seeking "[c]opies of all 'pause letters' described in the attached October 2023 FDIC Office of Inspector General report titled 'FDIC Strategies Related to Crypto-Asset Risks.'" A true and accurate copy of the November 8 FOIA request is available at Dkt. No. 27-1. A true and accurate unredacted copy of the FDIC Office of Inspector General's (OIG) October 2023 report is attached as Exhibit 3 to the FDIC's Memorandum in Support of the FDIC's Motion for Summary Judgment on Count I and Motion to Dismiss Count II of Plaintiff History Associates Incorporated's Amended Complaint (Motion for Summary Judgment). On January 22, 2024, the FDIC denied Plaintiff's November 8, 2023 FOIA request. A true and accurate copy of the January 22, 2024 denial is available at Dkt. No. 37-2.

10. On March 25, 2024, Plaintiff administratively appealed the FDIC's denial. Consistent with FDIC practice, a different group within the agency—the Corporate Litigation Unit—independently considered the appeal. A true and accurate copy of Plaintiff's March 25, 2024 appeal is attached as Exhibit 1 to the FDIC's Motion for Summary Judgment. The FDIC denied Plaintiff's administrative appeal by letter dated May 8, 2024. A true and accurate copy of the FDIC's May 8, 2024 appeal decision can be found at Dkt. No 37-3.

11. On January 16, 2025, the FDIC construed communications from Plaintiff's counsel as an additional FOIA request "for copies of any letters or other written communications that fit the same content description as the [25] 'pause letters,'" which the FDIC released on January 3, 2025. The timeframe for this request was "January 1, 2022 to the present." A true and accurate copy of the January 16, 2025 FOIA request is attached to this Declaration.

12. Plaintiff's November 8, 2023 and January 16, 2025 requests are collectively referred to as the "FOIA Requests."

The FDIC's Release of Responsive Records

13. In response to this litigation, the FDIC made four releases on January 3, February 5, February 21, and March 14, 2025, respectively, totaling over 200 records and over 800 pages. The FDIC revised the February 21, 2025 release on March 14, 2025 by re-releasing the records with fewer redactions. These records were published in the FDIC's FOIA Reading Room for public access. *See* https://www.fdic.gov/foia/foia-reading-room.

14. At the time of the February 5, 2025 release, the FDIC issued a press release titled "FDIC Releases Documents Related to Supervision of Crypto-Related Activities," which is available at https://www.fdic.gov/news/press-releases/2025/fdic-releases-documents-related-supervision-crypto-related-activities.

15. According to the press release, the FDIC "conduct[ed] a comprehensive review of all supervisory communications with banks that sought to offer crypto-related products or services." The press release also stated that the released records "reflect[] a commitment to enhance transparency, beyond what is required by the Freedom of Information Act (FOIA), while also attempting to fulfill the spirit of the FOIA request[s]."

16. The FDIC discretionarily released many records that were outside the scope of the FOIA Requests to achieve transparency into how the FDIC supervised crypto-related activities.

17. Generally, the redactions in the more than 200 records were applied under FOIA Exemptions 4, 6, and 8.

18. On March 14, 2025, the FDIC advised Plaintiff that it had completed its releases in response to the FOIA Requests. A true and accurate copy of the FDIC's March 14, 2025 letter to Plaintiff's counsel can be found at Dkt. No. 48-1.

The Searches

19. In June 2010, the FDIC completed a rollout of the Regional Automated Document Distribution (RADD) application. RADD is a document imaging, routing, and storage system that captures, indexes, distributes, and electronically stores supervisory business records for covered institutions.

- Covered institutions are FDIC-insured financial institutions, bank holding companies, institution-affiliated parties, and other service providers that perform a significant service or function for such entities.
- Supervisory business records include, but are not limited to, correspondence (including emails), memoranda, reports of examination, and other substantive supervisory information to and from covered institutions.
- When a secure email exchange with a covered institution constitutes a supervisory business record, it is to be retained in RADD.
- RADD uses folders to organize supervisory business records. Each covered institution has a folder that includes correspondence between the FDIC and covered institution (Correspondence Folder). Each covered institution also has a

folder that includes reports of examination and other supervisory activity reports (Exams Folder).

20. RADD is the official recordkeeping system for supervisory business records such as bank correspondence. As such, the FDIC primarily searched RADD to find records responsive to the FOIA Requests.

21. The FDIC's record retention schedule for RADD requires all records to be retained for 30 years (with some exceptions not relevant here). *See* Record Retention Schedule Number EIS1022.02.01, a true and correct copy of which is attached as Exhibit 7 to the FDIC's Motion for Summary Judgment. RADD is backed up daily. Any deleted records remain in what is known as the RADD archive, where the records can be retrieved if necessary.

22. As of June 27, 2025, there were over 1.9 million records in RADD. Over 1.3 million of these records were in RADD's Correspondence Folders.

23. On January 3, 2025, the FDIC released 25 so-called "pause" letters sent to 24 FDIC-supervised banks as detailed in the FDIC OIG's October 2023 report titled "FDIC Strategies Related to Crypto-Asset Risks."

24. The remaining releases were based on the following searches:

- For the 24 banks that received so-called "pause letters," the FDIC reviewed the RADD Correspondence and Exams Folder for each bank to identify any other correspondence related to crypto activities.
- For the time period January 1, 2022 through January 22, 2025, the FDIC performed a targeted search using relevant terms[3] of the RADD Correspondence

[3] The search terms included "crypto," "FIL-16-2022," "FIL 16-2022," "SAB 121," "stablecoin," "bitcoin," "blockchain," "digital asset," and "distributed ledger technology." The search also included one additional term that was a confidential third-party acronym.

Folders for the financial institutions that appeared on the agency's internal crypto tracking system (this search covered approximately 80 banks but did not include the 24 banks referenced above). The FDIC then reviewed approximately 20 document types for responsive records.

- For the time period January 1, 2022 through January 22, 2025, the FDIC performed a targeted search using relevant terms[4] of the Correspondence Folders for all banks in RADD. The FDIC then reviewed the most relevant document types, including letters to banks, interim bank contacts, internal memos and notes, and transmittal letters, for responsive records.
- By way of background, the FDIC sent confidential advisory letters to third parties for apparent violations of 12 C.F.R. Part 328 (misrepresentation of FDIC-insured status). The FDIC shared the advisory letters with some FDIC-supervised banks that had business relationships with the third parties. Some of the third parties that received advisory letters offered crypto-related products or services. Accordingly, the FDIC reviewed correspondence about advisory letters that was sent to FDIC-supervised banks. The FDIC identified this correspondence by searching RADD, using internal tracking forms, and conferring with FDIC regional offices.

25. The FDIC performed a search of archived records from RADD's Correspondence Folders for over 100 banks. The time period for this search was November 8, 2023 (the date of Plaintiff's first FOIA request) to January 23, 2025. The FDIC did not identify any additional responsive records from this search.

[4] The search terms were the same as the previous targeted search. *See supra* n.3.

FDIC Redactions

26. Generally, the FDIC applied redactions to the released records under FOIA Exemptions 4, 6, and 8. Consistent with these FOIA Exemptions, the FDIC redacted: (a) bank names or information that, alone or in combination with other information, could reasonably reveal an institution's identity; (b) bank-specific business relationships with third parties; (c) information submitted by banks to the FDIC in the course of the FDIC's supervisory activity, including confidential commercial information; and (d) personal privacy information.

27. FOIA Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4). FOIA Exemption 6 protects information about individuals in "personnel and medical files and similar files" when the disclosure of this information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). FOIA Exemption 8 permits an agency to withhold information "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." 5 U.S.C. § 552(b)(8).

28. Regarding the redactions made under FOIA Exemptions 4 and 8, the FDIC endeavored to segregate the records to release the maximum amount of information possible and only withhold information that would: (a) identify a particular bank; (b) identify third-parties with which a bank had entered into or was considering entering into a business relationship; or (c) divulge confidential commercial information about a bank or third-party. Examples of these redactions include:

- Bank names, bank logos, or other information that, alone or in combination with other information, could reasonably reveal an institution's identity. *See, e.g.*,

FDIC FOIA Reading Room, January 3, 2025 Release at pp. 3, 5, 7, 10, 13, 15, 17-18, 20, 27, 29, 32, 34, 37, 39, 42, 45-47, 49, 52, 58, 61, 65, 70, 73, and 78; FDIC FOIA Reading Room, February 5, 2025 Release at pp. 3, 6, 9, 11, 14-20, 22-27, 32, 37, 45, 47, 50-51, 55-56, 58, 61, 72, 85, 94, 105, 122, 137, 154, 170, 189, 206, 246, 281, 310, 336, 360, 390, 414, 442, 454, 516, 603, 643, 650, 660, 717, 722, and 732; FDIC FOIA Reading Room, Revised February 21, 2025 Release at pp. 3-4, 8, 23, 25, 27, 39, and 43-44; and FDIC FOIA Reading Room, March 14, 2025 Release at pp. 3, 9, and 49.

- Bank-specific business relationships with third parties—actual or contemplated. *See, e.g.*, FDIC FOIA Reading Room, January 3, 2025 Release at pp. 5, 7, 10, 20, 21, 29, 34, 39, 49, 63, 65, 67, 73, and 79; FDIC FOIA Reading Room, February 5, 2025 Release at pp. 11, 16, 22, 29, 78, 81, 111, 114, 134, 141-42, 241-42, 246, 302, 304-05, 357, 396, 436, 487, 516, 542-43, 583, 624, 651, 665, 710, 747, and 750; FDIC FOIA Reading Room, Revised February 21, 2025 Release at pp. 5, 9-10, 12-14, 16-18, 31, 34, 43-44, 50-51, 55, 60-62, 66, 68-70, 80-81, 83, 88-91, and 93-95; and FOIA Reading Room, March 14, 2025 Release at pp. 3-43, 45, 47, and 49-56.
- Records containing information submitted by banks to the FDIC in the course of the FDIC's supervisory activity, including confidential commercial information. *See, e.g.*, FDIC FOIA Reading Room, February 5, 2025 Release at pp. 330-31, 467-70, 479-85, 550-52, and 634-36; FDIC FOIA Reading Room, Revised February 21, 2025 Release at pp. 11-19, 25-47, 52-71, and 82-96; and FDIC FOIA Reading Room, March 14, 2025 release at pp. 9-43.

29. Redactions applied under FOIA Exemption 6 included information pertaining to individuals (*e.g.*, account or transaction information), signatures, or work cell phone numbers. *See, e.g.*, FDIC FOIA Reading Room, February 5, 2025 Release at pp. 289, 291, 324, 330-31, 419, 488, 499, 525, 551-52, 598, 640, 696, and 788; FDIC FOIA Reading Room, Revised February 21, 2025 Release at pp. 3-6; and FDIC FOIA Reading Room, March 14, 2025 Release at pp. 44-46, 50, 52, and 54.

Foreseeable Harm

30. I believe that removing the redactions applied under FOIA Exemptions 4 and 8 would increase the likelihood of revealing the identity of banks and third-parties with which banks were engaged.

31. I am aware that at least one entity utilized artificial intelligence to analyze the released records to identify—but not disclose—one of the underlying banks. *See* "Using AI and Other Modern Tech: Analyzing the FDIC Pause Letters," RegReform, Davis Wright Tremaine Webinar (March 14, 2025), https://www.dwt.com/insights/2025/03/using-ai-and-other-modern-tech (24:45-25:55).

32. I believe that removing the redactions applied under FOIA Exemption 6 would identify personal privacy information.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 9th day of July 2025, in [redacted].

[redacted]

Attachment

FDIC
Federal Deposit Insurance Corporation
550 17th Street, NW, Washington, DC 20429-9990
Legal Division

January 16, 2025

History Associates, Incorporated
c/o Nick Harper, Partner
Gibson Dunn
1700 M Street, NW
Washington, DC 20036

RE: FDIC FOIA Log Number 2025-FDIC-FOIA-00363

Your Freedom of Information Act (FOIA) request has been received by the FDIC's FOIA/Privacy Act Group and assigned Log Number 2025-FDIC-FOIA-00363. Your request is for the following:

> The October 2023 FDIC Office of Inspector General report titled "FDIC Strategies Related to Crypto-Asset Risks" states that, between March 2022 and May 2023, the FDIC issued letters "to certain FDIC-supervised financial institutions asking them to pause, or not expand, planned or ongoing crypto-related activities, and provide additional information." The report further states that the FDIC OIG obtained and reviewed those letters (referred to in the report as "pause letters") in preparing its report. *See* FDIC OIG Report at pp. ii, 5, 8, 11, 15.
>
> This request is for copies of any letters or other written communications that fit the same content description as the "pause letters" and were issued by the FDIC to any FDIC-supervised financial institution, but were not included in the collection of "pause letters" obtained and reviewed by the FDIC OIG for purposes of the FDIC OIG's evaluation and preparation of the October 2023 FDIC OIG report. The timeframe of the requested records is January 1, 2022 to the present.

Please be advised that the FOIA allows 20 business days from date of receipt to process your request, and additional processing time is allowed under certain circumstances. Please also be advised that the FDIC has decided to grant expedited processing.

You may contact me at acolgrove@fdic.gov to obtain information about the FOIA process and the status of your request. You may also call the FDIC's FOIA Service Center at 202-898-7021. If you submitted your request using the FDIC's SecureRelease Electronic FOIA Request Portal, you may track the status of your request by using the "My Requests" at https://www.securerelease.us/.

Please cite your FOIA Log Number in any future inquiries regarding your request.

IMPORTANT – In order to protect the privacy of your personal information, please note that the subject line of official FDIC emails regarding requests will contain the phrase "Secure Email"

followed by the request number. Please make any necessary adjustments to your email spam blocker to ensure proper delivery of these emails. Additionally, please contact me or the FDIC FOIA Service Center at the contact information above if you have any questions concerning the legitimacy of any email message you receive regarding your FOIA request to the FDIC.

Sincerely,

Alisa Colgrove
FOIA/Privacy Act Group

Office of Inspector General

FDIC Strategies Related to Crypto-Asset Risks

October 2023 **EVAL-24-01**

Evaluation Report
Audits, Evaluations, and Cyber

☆☆☆☆☆☆☆☆

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This report is not releasable outside of the FDIC without approval of the Office of Inspector General

NOTICE

Pursuant to Pub. L. 117-263, section 5274, non-governmental organizations and business entities identified in this report have the opportunity to submit a written response for the purpose of clarifying or providing additional context to any specific reference. Comments must be submitted to comments@fdicoig.gov within 30 days of the report publication date as reflected on our public website. Any comments will be appended to this report and posted on our public website. We request that submissions be Section 508 compliant and free from any proprietary or otherwise sensitive information.

Office of Inspector General

Executive Summary

FDIC Strategies Related to Crypto-Asset Risks

According to a September 2022 White House Fact Sheet, millions of people globally, including 16 percent of adult Americans, have purchased crypto assets. The Fact Sheet also stated, crypto assets "present potential opportunities to reinforce the U.S. leadership in the global financial system and remain at the technological frontier." Executive Order 14067 (March 2022) stated that the U.S. has an interest in responsible financial innovation and expanding access to safe and affordable financial services using crypto assets. The Executive Order also stated that the U.S. has an interest in reducing the cost of domestic and cross-border funds transfers and payments and modernizing its public payment systems, which may be possible through the use of crypto assets.

While crypto assets present many potential opportunities and benefits, they also pose a number of risks to the U.S. financial system. In recent years, the crypto-asset sector has experienced significant volatility. The total market capitalization of crypto assets fluctuated from about $132 billion in January 2019 to $3 trillion in November 2021. More concerning, the market capitalization has fallen by 60 percent to $1.2 trillion as of April 2023. These events highlight various risks that the crypto-asset sector could pose to financial institutions, including liquidity, market, pricing, and consumer protection risks. Financial institutions can be exposed to crypto-asset risks when providing services to crypto-asset companies or engaging in crypto-asset-related activities.

While currently limited, if material exposure of financial institutions to the risks posed by crypto-related activities were to manifest, it may affect the Federal Deposit Insurance Corporation's (FDIC) mission to maintain stability and public confidence in the Nation's financial system. The FDIC carries out its mission by, among other things, supervising and examining financial institutions for safety and soundness and consumer protection. The exposure of financial institutions to the risks posed by crypto-related activities presents safety and soundness risks and consumer protection concerns. According to the FDIC, it is taking a deliberate and cautious approach to bank participation in crypto-related activities.

As stated in Executive Order 14067, crypto assets present numerous opportunities to foster innovation and cost savings. The FDIC has an opportunity to take actions to uphold the United States' interests in the financial sector. However, because crypto assets also pose significant risks to the financial sector, the FDIC should ensure it

can effectively address those risks, and promote safety and soundness and consumer protection.

The objective of our review was to determine whether the FDIC has developed and implemented strategies that address the risks posed by crypto assets.

Results

The FDIC has started to develop and implement strategies that address the risks posed by crypto assets. However, the Agency has not assessed the significance and potential impact of the risks. Specifically, the FDIC has not yet completed a risk assessment to determine whether the Agency can sufficiently address crypto-asset-related risks through actions such as issuing guidance to supervised institutions. In addition, the FDIC's process for providing supervisory feedback on FDIC-supervised institutions' crypto-related activities is unclear. As part of its process, the FDIC requested financial institutions to provide information pertaining to their crypto-related activities. Additionally, the FDIC issued letters (pause letters), between March 2022 and May 2023, to certain FDIC-supervised financial institutions asking them to pause, or not expand, planned or ongoing crypto-related activities, and provide additional information. However, the FDIC did not (1) establish an expected timeframe for reviewing information and responding to the supervised institutions that received pause letters, and (2) describe what constitutes the end of the review process for supervised institutions that received a pause letter.

Until the FDIC assesses the risks of crypto activities and provides supervised institutions with effective guidance, the FDIC and some FDIC-supervised institutions may not take appropriate actions to address the most significant risks posed by crypto assets. In addition, based on evidence obtained during our evaluation, the FDIC's lack of clear procedures causes uncertainty for supervised institutions in determining the appropriate actions to take. If financial institutions do not receive timely feedback from the FDIC and do not understand what constitutes the end of the FDIC's review process, this uncertainty creates risk that the FDIC will be viewed as not being supportive of financial institutions engaging in crypto-related activities.

Recommendations

This report contains two recommendations for the FDIC to: (1) establish a plan with timeframes for assessing risks pertaining to crypto-related activities and (2) update

and clarify the supervisory feedback process related to its review of supervised institutions' crypto-related activities.

The FDIC concurred with both report recommendations and proposed corrective actions that were sufficient to address the intent of the recommendations. Therefore, we consider these recommendations to be resolved and open pending completion of the corrective actions. The FDIC plans to complete all corrective actions by January 30, 2024.

Contents

October 17, 2023

Subject | ***FDIC Strategies Related to Crypto-Asset Risks***

According to a September 2022 White House Fact Sheet, millions of people globally, including 16 percent of adult Americans, have purchased crypto assets.[1] The Fact Sheet also stated, crypto assets "present potential opportunities to reinforce the U.S. leadership in the global financial system and remain at the technological frontier." A March 2022 Executive Order stated that the U.S. has an interest in responsible financial innovation and expanding access to safe and affordable financial services using crypto assets.[2] The Executive Order also stated that the U.S. has an interest in reducing the cost of domestic and cross-border funds transfers and payments and modernizing its public payment systems that may be possible through the use of crypto assets.[3]

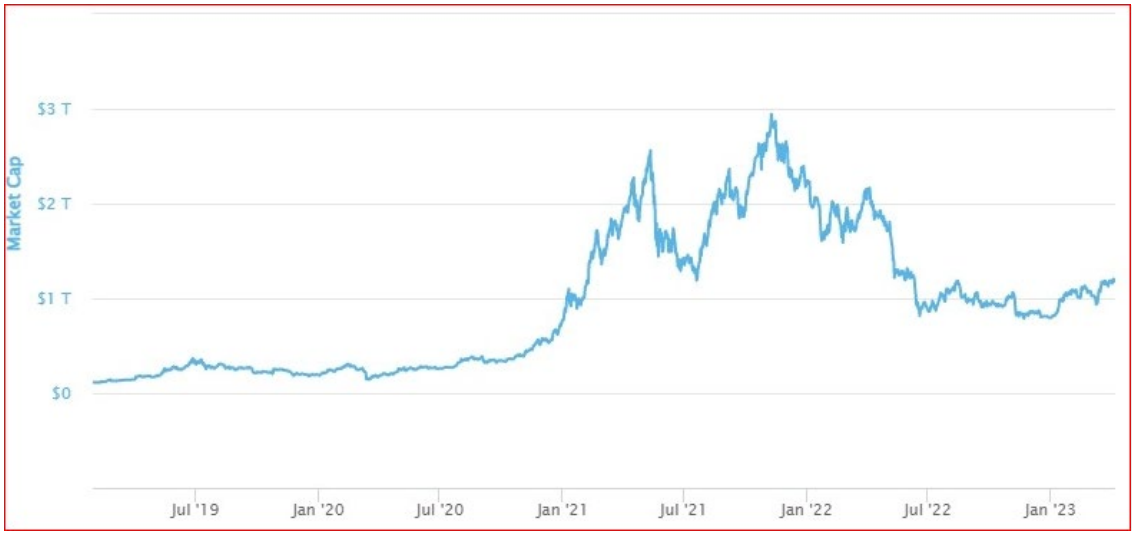
In March 2022, the U.S. Government Accountability Office (GAO) issued a report that described a number of benefits resulting from crypto assets.[4] According to GAO, cryptocurrencies, a type of crypto asset, are growing as a means of payment by individuals, businesses, and governments around the world. Because cryptocurrencies are digitally based and generally do not depend on intermediaries, they have the potential to reduce user costs. In addition, cryptocurrency users can conduct transactions in a manner that may provide greater privacy for their financial activities.

While crypto assets present many potential opportunities and benefits, they also pose a number of risks to the U.S. financial system. In recent years, the crypto-asset sector has experienced significant volatility. As shown in Figure 1, the total market capitalization of crypto assets fluctuated from about $132 billion in January 2019 to $3 trillion in November 2021. More concerning, the market capitalization has fallen

[1] *FACT SHEET:* White House Releases First-Ever Comprehensive Framework for Responsible Development of Digital Assets (September 16, 2022). By "crypto asset," the FDIC refers generally to any digital asset implemented using cryptographic techniques.
[2] Executive Order 14067, *Ensuring Responsible Development of Digital Assets* (March 9, 2022). The FDIC has determined that Executive Order 14067 is non-binding on the FDIC. We have included discussion of the Executive Order in this report because it provides context to the Federal Government's overall approach to crypto assets.
[3] Public payment systems are mechanisms established to facilitate the clearing and settlement of monetary and other financial transactions.
[4] Government Accountability Office, *Blockchain: Emerging Technology Offers Benefits for Some Applications but Faces Challenges,* GAO-22-104625 (March 2022).

by 60 percent to $1.2 trillion as of April 2023. These events highlight various risks that the crypto-asset sector could pose to financial institutions, including liquidity, market, pricing, and consumer protection risks.[5] Financial institutions can be exposed to crypto-asset risks by providing services to crypto-asset companies or by engaging in crypto-related activities.[6]

Figure 1: Crypto-Asset Market Capitalization—January 2019 to April 2023



Source: CoinMarketCap data as of July 26, 2023

While currently limited, if material exposure of financial institutions to the risks posed by crypto-related activities were to manifest, it may affect the Federal Deposit Insurance Corporation's (FDIC) mission to maintain stability and public confidence in the Nation's financial system. The FDIC carries out its mission by, among other things, supervising and examining financial institutions for safety and soundness and consumer protection. The exposure of financial institutions to the risks posed by crypto-related activities presents safety and soundness risks and consumer protection concerns. According to the FDIC, the Board of Governors of the Federal Reserve System (FRB), and the Office of the Comptroller of the Currency (OCC), financial institutions should be aware of a number of key risks. These risks include:

[5] For purposes of this report, a financial institution means either 1) a state-chartered bank or savings institution that is not a member of the Federal Reserve System or 2) an FDIC-insured depository institution. We use the terms "bank" and "financial institution" interchangeably throughout this report.

[6] In FIL-16-2022, the FDIC defined the term "crypto-related activities" to include acting as crypto-asset custodians; maintaining stablecoin reserves; issuing crypto and other digital assets; acting as market makers or exchange or redemption agents; participating in blockchain- and distributed ledger-based settlement or payment systems, including performing node functions; as well as related activities such as finder activities and lending. The FIL stated this listing is based on known existing or proposed crypto-related activities engaged in by FDIC-supervised institutions, but given the changing nature of this area, other activities may emerge that fall within the scope of this FIL. The inclusion of an activity within this listing should not be interpreted to mean that the activity is permissible for FDIC-supervised institutions.

- Volatility in crypto-asset markets which could potentially impact deposit flows associated with crypto-asset companies.
- Susceptibility to stablecoin run risk which could potentially impact deposit outflows for banking organizations that hold stablecoin reserves.[7]
- Contagion risk resulting from interconnections among certain crypto-asset participants, including through lending, investing, funding, service, and operational arrangements. These interconnections may also lead to concentration risks for financial institutions with exposures to the crypto-asset sector.

As stated in Executive Order 14067, crypto assets present numerous opportunities to foster innovation and cost savings. The FDIC has an opportunity to take actions to uphold the United States' interests in the financial sector. However, because crypto assets also pose significant risks to the financial sector, the FDIC should ensure it can effectively address those risks, and promote safety and soundness and consumer protection.

The objective of our review was to determine whether the FDIC has developed and implemented strategies that address the risks posed by crypto assets. We conducted this evaluation in accordance with the Council of the Inspectors General on Integrity and Efficiency *Quality Standards for Inspection and Evaluation*. Appendix 1 presents our evaluation objective, scope, and methodology.

BACKGROUND

The FDIC achieves its mission, in part, by carrying out a supervision program to promote safe and sound operations at financial institutions and ensure compliance with federal consumer protection laws. Further, the FDIC is responsible for managing resolutions and receiverships. The Division of Risk Management Supervision (RMS) supervises financial institutions to help ensure that they operate in a safe and sound manner; the Division of Depositor and Consumer Protection (DCP) supervises financial institutions to promote compliance with federal consumer protection laws and regulations; and the Divisions of Resolutions and Receiverships (DRR) and Complex Institution Supervision and Resolution close and liquidate failing and failed institutions.

[7] The term "stablecoins" refers to a category of cryptocurrencies with mechanisms that are aimed at maintaining a stable value, such as by tying the value of the coin to a specific currency, asset, or pool of assets or by algorithmically controlling supply in response to changes in demand in order to stabilize value.

FDIC Efforts to Address Crypto-Asset Risks

The FDIC developed an initial approach to address crypto-asset risks in 2021. The FDIC's approach, at that time, included a plan to provide clear guidance to the public on: (1) how the FDIC's existing rules and policies apply to crypto assets, (2) the types of activities that are permissible for financial institutions to engage in, and (3) the FDIC's supervisory expectations for financial institutions that engage in such activities. The approach also included working with the FRB and OCC to coordinate policies for how and under what circumstances financial institutions can engage in activities involving crypto assets.

In 2022, the FDIC shifted to a "bottom up" approach to understanding crypto-asset risks. In March 2022, the FDIC established the Crypto Asset Risks Interdivisional Working Group to focus on this new (and still current) approach to crypto-asset risks.[8] According to the FDIC, its current approach to engaging with supervised institutions as they consider crypto-related activities includes: (1) developing an understanding of supervised institutions' crypto-related activities, (2) providing institutions with case-specific supervisory feedback, and (3) providing broader industry guidance on an interagency basis.

To gain an understanding of the crypto-related activities and the associated risks, on April 7, 2022, the FDIC issued Financial Institution Letter (FIL) 16-2022, *Notification and Supervisory Feedback Procedures for FDIC-Supervised Institutions Engaging in Crypto-Related Activities*. The FIL requested that FDIC-supervised institutions notify the FDIC if they intended to engage in, or were currently engaged in, crypto-related activities. The FIL requested that institutions "provide information necessary to allow the agency to assess the safety and soundness, consumer protection, and financial stability implications of such activities." Also, the FIL stated that the FDIC will review the notification and information received and request additional information as needed. In addition, the FIL stated that the FDIC would provide relevant supervisory feedback to the FDIC-supervised institution, as appropriate, in a timely manner. The FRB and OCC have issued similar requests to their supervised institutions.[9]

In response to FIL 16-2022, a number of FDIC-supervised institutions provided notifications of their intent to engage in, or engagement in, crypto-related activities. According to FDIC data, as of January 2023, the Agency was aware of 96 FDIC-supervised financial institutions that either had expressed interest or were engaged in crypto-related activities. Some of these activities included

[8] The FDIC's Crypto Asset Working Group includes: RMS, DCP, DRR, Division of Insurance and Research, Division of Complex Institution Supervision and Resolution, and the Legal Division.
[9] Federal Reserve *SR 22–6 / CA 22–6: Engagement in Crypto-Asset-Related Activities by Federal Reserve-Supervised Banking Organizations* (August 16, 2022); OCC, Interpretive Letter 1179 (November 18, 2021).

crypto-asset-custody services, deposit services, crypto-asset-collateralized lending, and facilitation of customer purchase and sale of crypto assets through a third party.

In June 2022, the Directors of RMS and DCP issued a memorandum to the Regional Directors (RD memo) to facilitate the tracking and review of notifications received in response to the FIL.[10] The RD memo established a coordinated process for receiving, reviewing, and responding to these notifications. It directed regional staff to consult with RMS and DCP officials in the Washington Office (WO) after receiving a notification from an FDIC-supervised institution regarding planned or current crypto-related activities. In addition, regional staff were directed to coordinate with the appropriate Regional Counsel (who would consult with the WO Legal Division) concerning an activity's permissibility and other legal issues. The FDIC amended the RD memo in October 2022 to include a timeframe for initiating consultations with the WO and Regional Counsel. It also added information request templates for institutions with planned or ongoing crypto-asset purchase and sale facilitation and crypto-asset-collateralized lending activities. Furthermore, it created a template letter to notify institutions of their activities that were deemed out-of-scope. Lastly, the FDIC updated the activities that it considered to be out-of-scope of the FIL. The out-of-scope activities included: (1) providing deposit account services to crypto-asset automated teller machine operations; (2) loans to crypto-related entities that were not collateralized by crypto; and (3) deposit accounts used for the business operations of, or processing automated clearing house payments for, crypto-related companies in which the bank did not hold/maintain the funds of the crypto-related companies' customers.

According to the FDIC, as part of its review of financial institutions' crypto-related activities, between March 2022 and May 2023, the FDIC sent letters to 24 supervised institutions. The letters asked that the institutions pause from proceeding with planned activities or expanding existing activities and to provide additional information. The FDIC asked these 24 financial institutions to pause their crypto-related activities in order to assess the safety and soundness, consumer protection, and financial stability implications of such activities before providing supervisory feedback. According to the FDIC, as of August 2023, the FDIC had provided 6 of these 24 supervised institutions with supervisory feedback related to their planned or ongoing crypto-related activities.[11]

[10] Regional Director Memorandum, *Procedures for Reviewing Notifications of Engagement in Crypto-Related Activities* (June 6, 2022, amended October 31, 2022).

[11] According to the FDIC, the Agency has provided 15 supervised institutions with supervisory feedback related to their planned or ongoing crypto-related activities. Only 6 of these 15 institutions had received a pause letter.

FDIC Efforts to Address Crypto-Related Activities of Failed Institutions

The resolution of failing or failed institutions (FFI) engaged in crypto-related activities poses complex challenges to the FDIC. The challenges include the assessment of franchise value, operational considerations, and deposit insurance determinations. As a result, DRR developed a strategy to address these challenges. In January 2021, DRR began developing a Digital Assets Operational Plan to ensure its readiness to respond to and execute on resolution scenarios related to crypto assets. In December 2022, DRR completed the first phase of its plan by developing and documenting five known potential use cases.[12] According to DRR, this plan will be a living document, and DRR will update the plan as new digital asset activities, legislative developments, and advances in technology emerge. In addition, DRR entered into a contract for crypto-asset management and liquidation services associated with FFIs.

FDIC Efforts to Address Misrepresentations of Deposit Insurance

A separate, but related issue, is the risk of misrepresentations about FDIC deposit insurance by non-bank entities (such as crypto companies). In 2022, a cryptocurrency company filed for bankruptcy. This company had been misrepresenting to its customers for over a year that the funds it held for customers were insured by the FDIC. In July 2022, the FDIC and FRB issued a joint letter demanding that this firm cease and desist from making such claims. According to the FDIC, between July 2022 and June 2023, the Agency issued 11 additional public advisory letters to non-bank entities that appeared to be making crypto-related misrepresentations about FDIC deposit insurance.[13] These advisory letters demanded that the recipients stop making false and misleading statements regarding FDIC deposit insurance and take immediate action to address these misleading and false statements or to provide documentation that their claims are true and accurate.[14] The FDIC also issued FIL 35-2022 *Advisory to FDIC-Insured Institutions Regarding Deposit Insurance and Dealings with Crypto Companies,* and a *Fact Sheet: What the Public Needs to Know About FDIC Deposit Insurance and Crypto Companies.* FIL 35-2022 and the Fact Sheet provided additional information about

[12] The five potential use cases include: (1) crypto assets held and owned by the FFI, (2) crypto assets held by the FFI as loan collateral, (3) crypto assets held by the FFI in custody for customers, (4) bank-created stabletoken on a permissioned ledger, and (5) a multibank permissioned payment system.

[13] These 11 letters do not represent all public advisory letters that the FDIC has issued regarding misrepresentations about FDIC deposit insurance. For purposes of this report, we included the number of letters issued to address crypto-related misrepresentations only.

[14] The Federal Deposit Insurance Act prohibits any person from representing or implying that an uninsured deposit is insured or from knowingly misrepresenting the extent and manner in which a deposit liability, obligation, certificate, or share is insured and authorizes the FDIC to enforce these prohibitions. 12 U.S.C.1828(a)(4).

deposit insurance coverage and the risks of misrepresentations of FDIC insurance coverage.

The FDIC obtains information on potential deposit insurance misrepresentations through various methods, including monitoring three public portals. DCP monitors two of the portals, which also contain other consumer protection and deposit insurance complaints. The Legal Division created the third portal in July 2022.[15] This third portal is focused on complaints and inquiries related to misrepresentations of deposit insurance. Along with setting up the new portal, the FDIC updated internal processes for evaluating, escalating, and responding to misrepresentation complaints and inquiries. The Legal Division is the primary group responsible for responding to misrepresentation issues.

Joint Statements by the Federal Regulatory Agencies

The FDIC, FRB, and OCC jointly issued a number of public statements regarding the risks posed by crypto assets in 2021 and 2023. In November 2021, the FDIC, FRB, and OCC issued a joint statement summarizing their interagency crypto-asset policy sprint initiative. The initiative set forth the agencies' plan to clarify the rules and regulations around how financial institutions can engage in crypto-related activities.[16] In the joint statement, the agencies said that they planned to "provide greater clarity on whether certain activities related to crypto assets conducted by banking organizations are legally permissible." The agencies also stated that they planned to provide "expectations for safety and soundness, consumer protection, and compliance with existing laws and regulations" related to certain crypto-related activities.[17]

In January and February 2023, the FDIC, FRB, and OCC issued two additional joint statements regarding financial institutions' crypto-related activities.[18] In the January 2023 joint statement, the agencies highlighted key crypto-asset risks for financial institutions' awareness. The joint statement also outlined the agencies' views regarding whether certain crypto-related activities are consistent with safe and sound banking practices. The agencies stated that "issuing or holding as principal crypto assets that are issued, stored, or transferred on an open, public, and/or

[15] This portal was created as part of the FDIC's final rule on False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo, which became effective July 5, 2022. This rule established the process by which the FDIC will identify and investigate conduct that may violate section 18(a)(4) of the FDI Act.
[16] *Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps* (November 2021).
[17] The joint statement listed these crypto-related activities: (1) Crypto-asset safekeeping and traditional custody services, (2) Ancillary custody services, (3) Facilitation of customer purchases and sales of crypto assets, (4) Loans collateralized by crypto assets, (5) Issuance and distribution of stablecoins, and (6) Activities involving the holding of crypto assets on the balance sheet.
[18] *Joint Statement on Crypto-Asset Risks to Banking Organizations* (January 2023).

decentralized network, or similar system is highly likely to be inconsistent with safe and sound banking practices."[19] Further, the agencies warned that they have "significant safety and soundness concerns with business models that are concentrated in crypto-asset-related activities or have concentrated exposures to the crypto-asset sector." In the February 2023 joint statement, the agencies discussed the heightened liquidity risks presented by certain funding sources of crypto-asset-sector participants and offered methods to manage such risks. The February 2023 statement also discussed the importance of establishing and maintaining effective risk management and controls commensurate with the level of liquidity risks and provided examples of certain practices.[20]

EVALUATION RESULTS

We found that the FDIC has started to develop and implement strategies that address the risks posed by crypto assets. For example, the FDIC identified the risks associated with its supervised financial institutions' crypto-related activities and issued FIL-16-2022, which established a strategy to review information financial institutions submitted pertaining to their crypto-related activities and provide supervisory feedback on these activities. However, the Agency has not assessed the significance and potential impact of the risks. Specifically, the FDIC has not yet completed a risk assessment to determine whether the Agency can sufficiently address crypto-asset-related risks through actions such as issuing guidance to supervised institutions. In addition, the FDIC's process for providing supervisory feedback under FIL-16-2022 is unclear. As part of its process, the FDIC issued letters (pause letters) to certain FDIC-supervised financial institutions asking them to pause, or not expand, planned or ongoing crypto-related activities. However, the FDIC did not (1) establish an expected timeframe for reviewing information and responding to the supervised institutions that received pause letters and (2) describe what constitutes the end of the review process for supervised institutions that received a pause letter.

Until the FDIC assesses the risks of crypto activities and provides supervised institutions with effective guidance, the FDIC and some FDIC-supervised institutions may not take appropriate actions to address the most significant risks posed by crypto assets. In addition, based on evidence obtained during our evaluation, the FDIC's lack of clear procedures causes uncertainty for supervised institutions in determining the appropriate actions to take. If financial institutions do not receive timely feedback from the FDIC and do not understand what constitutes the end of the

[19] Decentralized network generally refers to crypto-asset protocols and platforms that allow for some form of automated peer-to-peer transactions.
[20] *Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities* (February 2023).

FDIC's review process for paused crypto-related activities, this uncertainty creates risk that the FDIC will be viewed as not being supportive of financial institutions engaging in crypto-related activities.

The FDIC Should Continue Its Efforts to Assess Risks Related to Crypto Assets

The FDIC has identified numerous risks associated with its supervised financial institutions' crypto-related activities. However, the Agency has not yet assessed the significance and potential impact of these risks through a risk assessment. A risk assessment would enable the FDIC to determine whether the crypto-asset-related risks can be sufficiently addressed as identified in the Crypto Asset Risks Interdivisional Working Group ("Crypto Asset Working Group") Charter.

The Crypto Asset Working Group Charter (May 2022) describes its mission as being "responsible for assessing the safety and soundness, consumer protection, deposit insurance, resolution planning, and financial stability risks associated with crypto-asset-related activities that are, or may be, engaged in by financial institutions." The Charter further states that the group "shall report out its assessment of these risks, including whether such risks can be sufficiently mitigated, and, as appropriate, provide recommendations for addressing those risks to the relevant officers of the agency."

The FDIC started to identify risks associated with financial institution crypto-related activities in its draft *Framework for Developing an FDIC Policy View on Digital Assets Potential [Insured Depository Institution] Activity, Assessment Approach, and Potential Policy Issues* (2021 Framework) and the draft *Facilitation Bottom-Up Risk Assessment Framework* (2022 Facilitation Framework) (September 26, 2022). In its 2021 Framework, the FDIC identified potential financial institution crypto-related activities and the Agency's approach for analyzing risks and developing a policy view. The FDIC used this as a briefing document during a discussion on a 2021 FDIC Digital Assets Performance Goal with the former Chairman. In the 2022 Facilitation Framework, the FDIC identified numerous risks, including consumer protection risks and financial stability risks specifically associated with financial institutions' crypto-asset-facilitation activities.[21] The FDIC issued joint statements in January and February 2023, along with the FRB and OCC, which identified key crypto-asset risks and heightened liquidity risks presented by certain funding sources of crypto-asset-sector participants. However, the Crypto Asset Working Group has not completed a risk assessment of any of the crypto-related activities, including facilitation activities.

[21] Crypto-asset-facilitation activities are activities whereby a financial institution connects customers and third parties to facilitate the customers' purchase and sale (trades) of crypto assets.

According to the GAO's *Standards for Internal Control in the Federal Government* (September 2014) (Green Book), "Risk assessment is the identification and analysis of risks related to achieving the defined objectives to form a basis for designing risk responses." It also states, "Management analyzes the identified risks to estimate their significance..."[22] Furthermore, "Management designs overall risk responses for the analyzed risks based on the significance of the risk and defined risk tolerance."[23] The Green Book also states that documentation "provides a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel, as well as a means to communicate that knowledge as needed to external parties, such as external auditors."

According to the FDIC, it is taking a deliberate and cautious approach to bank participation in crypto-asset-related activities. However, the FDIC has not yet analyzed the crypto-asset risks and documented its assessment of them. Specifically, the FDIC has not assessed their significance in order to determine the magnitude of impact, likelihood of occurrence, and nature of the risks. Also, the FDIC has not developed mitigation strategies, such as issuing guidance to financial institutions, to ensure that risks are within the defined risk tolerance.

This occurred because the FDIC's process for assessing and responding to risks related to FDIC-supervised institutions' crypto-related activities is not mature. In early 2022, the FDIC adopted a new bottom-up approach to develop an understanding of supervised institutions' crypto-asset-related activities and the associated risks. Since that time, the FDIC has made efforts to address crypto-asset risks, such as issuing two FILs, the RD memo, two interagency joint statements, and a number of public advisory letters to crypto-asset companies. While these efforts are positive and necessary to understanding the risks posed by crypto assets, the FDIC must continue its work to fully understand and address the risks.

If the FDIC does not assess the significance of the risks posed by crypto assets, it might not take appropriate actions to address them. The FDIC should conduct risk assessments as a basis to develop mitigation strategies. Without a risk assessment, the FDIC may not develop and issue effective policies, procedures, and guidance to address these risks.

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[22] Green Book 7.06 states Management estimates the significance of the identified risks to assess their effect on achieving the defined objectives at both the entity and transaction levels. Management estimates the significance of a risk by considering the magnitude of impact, likelihood of occurrence, and nature of the risk. Magnitude of impact refers to the likely magnitude of deficiency that could result from the risk and is affected by factors such as the size, pace, and duration of the risk's impact. Likelihood of occurrence refers to the level of possibility that a risk will occur. The nature of the risk involves factors such as the degree of subjectivity involved with the risk and whether the risk arises from fraud or from complex or unusual transactions.

[23] Green Book 6.08 defines risk tolerance as "the acceptable level of variation in performance relative to the achievement of objectives."

If the FDIC does not provide its supervised institutions with effective guidance, the FDIC and some FDIC-supervised institutions may not take appropriate actions to address the most significant risks posed by crypto assets. This could impact the FDIC's mission to promote financial stability. The FDIC promotes financial stability, in part, by ensuring safe and sound financial institution practices and protecting consumers from financial harm. Absent effective guidance, financial institutions may not employ safe and sound practices to mitigate risks while developing innovative strategies and business lines to stay competitive in the financial marketplace.

Recommendation

We recommend that the Crypto Asset Risks Interdivisional Working Group:

1. Establish a plan with timeframes for assessing risks pertaining to crypto-related activities by:
   a) Continuing to identify and document crypto-asset risks,
   b) Performing and documenting an analysis of the identified risks to estimate their significance, and
   c) Developing and documenting strategies to address crypto-asset risks.

The FDIC Should Improve Its Supervisory Feedback Process for Crypto-Related Activities

The FDIC issued FIL-16-2022 which established a strategy to review information financial institutions submitted pertaining to their crypto-related activities and provide supervisory feedback on these activities. However, the FDIC's process for providing supervisory feedback to FDIC-supervised institutions about their crypto-related activities is unclear. The FDIC asked some financial institutions to pause or refrain from expanding certain crypto-related activities until it completed a review and provided supervisory feedback. Under the FIL, the FDIC was to provide timely, relevant, supervisory feedback. However, the FDIC did not establish an expected timeframe for reviewing the activities and responding to the FDIC-supervised institutions that received a pause letter. Also, the FDIC did not define what constitutes the end of its review process for institutions that received a pause letter. While the FDIC has maintained communication with these institutions, the lack of a clear end to the review process results in an extended pause and uncertainty for some institutions.

According to the FDIC, between March 2022 and May 2023, the FDIC sent letters to 24 supervised institutions as part of its review of the institutions' crypto-related activities. The letters (pause letters) asked that the institutions pause from proceeding with planned activities or expanding existing activities and provide additional information. The pause letters stated that the institutions should provide

additional information "in advance of implementation," "pause all crypto asset-related activities," or "not proceed with any crypto-asset activity." The FDIC asked the institutions to pause their activities in order to review the institutions' crypto-related activities before providing supervisory feedback. The activities that institutions provided information on include crypto-asset-custody services, facilitation of customer purchase and sale of crypto assets through a third party, and crypto-asset-collateralized lending. According to the FDIC, as of August 2023, out of the 24 supervised institutions that received a pause letter, the FDIC had only provided 6 institutions with supervisory feedback. Fourteen supervised institutions have decided not to pursue crypto-related activities or are no longer FDIC-supervised.[24] The remaining 4 have not received any supervisory feedback from the FDIC.

Review Timeframe Not Established

The FDIC did not establish an expected timeframe for reviewing the institutions' activities and responding to the FDIC-supervised institutions that received pause letters. According to FIL 16-2022, "[t]he FDIC will provide relevant supervisory feedback to the FDIC-supervised institution, as appropriate, **in a timely manner**" (emphasis added). The FDIC established procedures for reviewing and responding to notifications under the FIL in an RD memo. The RD memo, however, only included a timeframe for initiating consultations with the Washington Office and requesting additional information from supervised institutions. It did not identify timeframes for completing the review of the information submitted by a financial institution, responding to the financial institution, and finalizing the review. The FDIC pause letters also did not provide the financial institutions with a timeframe for FDIC review of the information nor a timeframe for providing supervisory feedback.

Review End Process Not Described

FDIC procedures do not describe what constitutes the end of the review process for supervised institutions that received a pause letter. The RD memo states that "[t]he type of feedback provided will vary depending on various factors…" and "[t]he format of the feedback will vary depending on whether a more formal examination activity is planned or in process...". It also states that "[t]he final supervisory feedback should be retained" within the FDIC system. An FDIC official described final supervisory feedback as "the final version of the supervisory feedback to be transmitted to the bank." This official further stated the term "does not have a special meaning beyond being the last stage of the internal review process." The FDIC's procedures do not describe the end of the review process and what the final supervisory feedback entails. By not clearly stating or documenting what constitutes the end of the FDIC's review process, the FDIC may be causing confusion for the financial institutions that

[24] There are five additional supervised institutions that are no longer pursuing crypto activities or are no longer FDIC-supervised, but these five institutions are included within the six institutions that received supervisory feedback.

received a pause letter. For example, when one institution provided information on its planned crypto-related activities to the FDIC, it requested that the FDIC provide its approval of those activities. However, in the pause letter sent to the supervised institution, the FDIC stated that the FIL "does not provide for the issuance of an FDIC non-objection...."[25] The letter requested that the institution "not proceed with planned activities, pending FDIC supervisory feedback." This example demonstrates that the institution may be confused about what would constitute the end of the FDIC's review process.

According to the GAO *Standards for Internal Control in the Federal Government*, "[m]anagement documents in policies… its responsibility for an operational process's objectives and related risks, and control activity design, implementation, and operating effectiveness." Policies may be further defined through day-to-day procedures. These procedures may "include the timing of when a control activity occurs and any follow-up corrective actions to be performed by competent personnel if deficiencies are identified."

The RD memo did not include an expected timeframe for reviewing a financial institution's information and responding to an institution that received a pause letter. It also did not describe the end of the review process for these institutions. This occurred because the FDIC's process for reviewing and responding to information received from FDIC-supervised institutions' crypto-related activities is not mature. In early 2022, the FDIC adopted a new bottom-up approach to understand crypto-asset risks through use cases. The FDIC is continuing this effort in 2023.

Based on evidence obtained during our evaluation, including our independent evaluation of the FDIC's process, discussions with FDIC personnel, and statements made by individuals in the banking and crypto-asset industries, we determined that the FDIC's lack of clear procedures and timely feedback regarding crypto-asset activities causes uncertainty for supervised institutions in determining the appropriate actions to take. While the FDIC has maintained communication with these institutions, the lack of a clear end to the review process results in an extended pause and uncertainty for some institutions. The uncertainty in the process creates risk that the FDIC will be viewed as not being supportive of financial institutions participating in crypto activities. Such a view leads to risk that the FDIC would inadvertently limit financial institution innovation and growth in the crypto space. This view has also been expressed by individuals in the banking and crypto-asset industries alleging that financial regulators have been cutting off crypto firms from accessing the banking system and stifling innovation.

[25] A non-objection is when the banking regulatory agency communicates to the institution that it does not object to the activity.

Recommendation

We recommend that the Director of the Division of Risk Management Supervision:

2. Update and clarify the supervisory feedback process to (a) establish an expected timeframe for reviewing information and responding to FDIC-supervised institutions pursuant to the Financial Institution Letter and (b) describe what constitutes the completion of its review of its supervised institutions' crypto-related activities.

FDIC COMMENTS AND OIG EVALUATION

The FDIC's Director of RMS provided a written response, dated September 27, 2023, to a draft of this report. The response is presented in its entirety in Appendix 3.

In its response, the FDIC concurred with both report recommendations. The FDIC's proposed corrective actions were sufficient to address the intent of both recommendations, and the FDIC plans to complete corrective actions for these recommendations by January 30, 2024. We consider both recommendations to be resolved.

Both recommendations in this report will remain open until we confirm that corrective actions have been completed and the actions are responsive. A summary of the FDIC's corrective actions is contained in Appendix 4.

Objective

The evaluation objective was to determine whether the FDIC has developed and implemented strategies that address the risks posed by crypto assets.

We conducted this evaluation from June 2022 through June 2023 in accordance with the Council of the Inspectors General on Integrity and Efficiency *Quality Standards for Inspection and Evaluation* (issued December 2020).

Scope and Methodology

The scope of our evaluation focused on the FDIC's efforts to develop and implement strategies that address crypto-asset risks. To obtain an understanding of the FDIC's efforts, we interviewed FDIC officials and staff from the Crypto Asset Risks Interdivisional Working Group, the Division of Risk Management Supervision, the Division of Depositor and Consumer Protection, the Division of Resolutions and Receiverships, the Division of Complex Institution Supervision and Resolution, and the Legal Division. Additionally, we reviewed the following relevant FDIC documents:

- Digital Assets Operational Plan (Revised December 2022);
- Division of Resolutions and Receiverships contract with a third party for crypto-asset services to support resolution and receivership activities (effective September 2021);
- *Draft Framework for Developing an FDIC Policy View on Digital Assets Potential [Insured Depository Institution] Activity, Assessment Approach, and Potential Policy Issues* (2021);
- *Draft Facilitation Bottom-Up Risk Assessment Framework* (September 26, 2022);
- FDIC public advisory letters issued to companies that appeared to be making crypto-related false or misleading representations about FDIC deposit insurance (Letters issued between July 2022 and June 2023);
- FDIC letters issued to certain FDIC-supervised institutions asking for additional information on planned or ongoing crypto-related activities, and pause from proceeding with planned activities or expanding existing activities (Letters issued between March 2022 and May 2023);
- FDIC's Crypto-Related Activity Tracking System data (as of January 2023);
- Financial Institution Letter 16-2022, *Notification and Supervisory Feedback Procedures for FDIC-Supervised Institutions Engaging in Crypto-Related Activities* (April 7, 2022);

- Financial Institution Letter 35-2022 *Advisory to FDIC-Insured Institutions Regarding Deposit Insurance and Dealings with Crypto Companies,* and *Fact Sheet: What the Public Needs to Know About FDIC Deposit Insurance and Crypto Companies* (July 29, 2022)*;*
- Regional Director Memorandum, *Procedures for Reviewing Notifications of Engagement in Crypto-Related Activities* (June 6, 2022, amended October 31, 2022);
- *Remarks by FDIC Chairman Jelena McWilliams at Money 20/20* (October 2021);
- *Remarks by FDIC Acting Chairman Martin J. Gruenberg at the Brookings Institution on The Prudential Regulation of Crypto-Assets* (October 2022);
- The Crypto Asset Risks Interdivisional Working Group Charter (May 2022); and
- The Crypto Asset Risks Interdivisional Working Group minutes (April 2022 through February 2023).

We also reviewed joint statements issued by the FDIC, OCC, and FRB: *Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps* (November 23, 2021); *Joint Statement on Crypto-Asset Risks to Banking Organizations* (January 3, 2023); and *Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities* (February 23, 2023).

We further reviewed Executive Order No. 14067, *Executive Order on Ensuring Responsible Development of Digital Assets* (March 9, 2022) and the associated reports directed by the Executive Order. Moreover, we reviewed the GAO Report, *Emerging Technology Offers Benefits for Some Applications but Faces Challenges,* GAO-22-104625 (March 2022).

To gain an understanding of the FDIC's supervisory actions provided to its supervised institutions regarding their crypto-related activities, we selected a sample of nine institutions engaged in or planning to engage in crypto-related activities. We selected the sample from the FDIC's Crypto-Related Activity Tracking System (as of October 2022). For this sample, we reviewed the FDIC's examination or visitation documentation, correspondence, and letters issued as of January 2023.

In addition, we reviewed FRB's *SR 22–6 / CA 22–6: Engagement in Crypto-Asset-Related Activities by Federal Reserve–Supervised Banking Organizations* (August 16, 2022) and the OCC Interpretive Letter 1179 (November 18, 2021). We further interviewed these two Federal banking regulatory agencies to obtain information on their efforts in identifying and addressing risks associated with their supervised institutions' crypto-related activities.

We applied internal control principles promulgated by the GAO (the Green Book) to guide our work when appropriate. For example, we considered internal controls standards, and activities, related to (1) identifying, analyzing, and responding to risks

and (2) implementing control activities such as documentation of responsibilities through policies.

Appendix 2 Acronyms and Abbreviations

Crypto Asset Working Group	Crypto Asset Risks Interdivisional Working Group
DCP	Division of Depositor and Consumer Protection
DRR	Division of Resolutions and Receiverships
FDIC	Federal Deposit Insurance Corporation
FFI	Failing or failed institutions
FIL	Financial Institution Letter
FRB	Board of Governors of the Federal Reserve System
GAO	United States Government Accountability Office
OCC	Office of the Comptroller of the Currency
OIG	Office of Inspector General
RD memo	Regional Director memorandum
RMS	Division of Risk Management Supervision
WO	Washington Office

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990
Division of Risk Management Supervision

TO: Terry L. Gibson
Assistant Inspector General, Audits, Evaluations, and Cyber
Office of Inspector General

FROM: Doreen R. Eberley DOREEN EBERLEY Digitally signed by DOREEN EBERLEY Date: 2023.09.27 18:43:57 -04'00'
Director, Division of Risk Management Supervision

DATE: September 27, 2023

RE: Response to Draft Evaluation Report
FDIC Strategies Related to Crypto Asset Risks (No. 2022-007)

BACKGROUND

The FDIC has completed its review of the Office of Inspector General's (OIG) draft evaluation report entitled, *FDIC Strategies Related to Crypto Asset Risks (No. 2022-007)*, provided on August 31, 2023 ("draft report"). FDIC concurs with the OIG's two recommendations, and provides a response to the recommendations below, including a summary of management's planned actions.

FDIC'S APPROACH TO ENGAGING WITH BANKS ON CRYPTO-RELATED ACTIVITIES

From the perspective of bank regulators, before banks engage in new or rapidly evolving activities, such as those related to the crypto-asset arena, it is important that they understand that the activity is permissible under applicable laws and regulations; that the activity can be conducted in a safe and sound manner; that the bank has put in place appropriate measures and controls to identify and manage the novel risks associated with those activities; and that the bank complies with all relevant laws and regulations, including those related to anti-money laundering/countering the financing of terrorism, and consumer protection. As the OIG points out in its report, the crypto-asset sector has proven to be highly volatile and has exhibited a number of risks to financial stability and institutions, including contagion risks due to high levels of interconnectedness within the sector.

As the crypto-asset sector grew rapidly in 2021 and early 2022, banking regulators recognized that there was also an increasing interest by some banks to engage in crypto-asset activities. The FDIC had been generally aware of the interest in crypto-asset related activities through its normal supervision process, but as interest accelerated, the FDIC recognized that there was insufficient information on which banks had been engaging in, or were interested in engaging in, crypto-related activities. To address that gap, and in consideration of various safety and soundness, consumer protection, and financial stability concerns, the FDIC issued Financial Institution Letter, *Notification of Engaging in Crypto-Related Activities* (FIL-16-2022) in April

2022, asking FDIC-supervised institutions to notify the FDIC of the crypto-related activities in which they were engaged or intended to engage.[1] FIL-16-2022 described some of the crypto-related risks about which the FDIC was concerned and indicated that the FDIC would provide supervisory feedback related to the planned or ongoing activities.

Subsequently, significant events, bankruptcies, and volatility in the crypto-asset industry exposed a number of vulnerabilities in the crypto-asset sector. For example, the May 2022 Terra USD collapse; the July 2022 bankruptcies of Three Arrows Capital (3AC), Voyager, and Celsius; the November 2022 FTX bankruptcy; and the significant price decline of Bitcoin (BTC) in 2022 from over $47,000 to less than $17,000.[2] Some of these disruptions involved consumers being unable to access their funds. In addition, it became evident that false and misleading statements, either direct or implied, by crypto-asset entities concerning the availability of deposit insurance for a given crypto-asset product violated the law, and could give consumers the impression that crypto-asset products are protected by FDIC deposit insurance, when they are not.[3]

In July 2022, the FDIC issued a fact sheet for consumers regarding deposit insurance[4] and an advisory reminding insured banks of the risks that could arise related to misrepresentations of deposit insurance.[5] While not specific to crypto-assets, the FDIC Board of Directors approved a final rule on May 17, 2022, to help address instances in which firms misrepresent the availability of deposit insurance in violation of the law.[6] Also, on December 13, 2022, the FDIC Board of Directors issued for public comment a proposed rule to amend its regulations on use of the official FDIC sign and to clarify the FDIC regulation regarding misrepresentations of deposit insurance. This proposed rule also adds crypto-asset to the definition of non-deposit product.[7] The volatility in the crypto-asset sector continued as 2022 unfolded, including a rapid deterioration in and ultimate bankruptcy of a large crypto-asset firm.[8]

The banking regulators had been observing and discussing the risks posed by the crypto-asset sector, and determined to issue interagency guidance regarding those risks. In January 2023, the FDIC, the Board of Governors of the Federal Reserve (Federal Reserve), and the Office of the Comptroller of the Currency (OCC) released a joint statement on crypto-asset risks to banking organizations (see FIL-01-2023, *Joint Statement on Crypto-Asset Risks to Banking Organizations*, issued January 5, 2023).[9] The statement describes the risks to banking

[1] See https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html
[2] See, for example, https://www.washingtonpost.com/business/2022/07/06/voyager-bankruptcy-three-arrows/ and https://www.washingtonpost.com/business/2022/07/13/crypto-bankruptcy-celsius-depositors/ and https://www.nytimes.com/2022/11/11/business/ftx-bankruptcy.html and https://coinmarketcap.com/currencies/bitcoin/
[3] See https://www.fdic.gov/news/press-releases/2022/pr22060.html
[4] See https://www.fdic.gov/news/press-releases/2022/pr22058.html
[5] See https://www.fdic.gov/news/financial-institution-letters/2022/fil22035.html
[6] See https://www.fdic.gov/news/financial-institution-letters/2022/fil22021.html
[7] See https://www.fdic.gov/news/financial-institution-letters/2022/fil22052.html
[8] See, for example, https://www.nytimes.com/2022/11/11/business/ftx-bankruptcy.html and https://www.wsj.com/articles/crypto-crisis-a-timeline-of-key-events-11675519887
[9] See https://www.fdic.gov/news/financial-institution-letters/2023/fil23001.html

organizations and reminds banking organizations that they should ensure that crypto-asset-related activities can be performed in a safe and sound manner, are legally permissible, and comply with applicable laws and regulations, including those designed to protect consumers.

Also, in February 2023, the FDIC, Federal Reserve, and OCC issued a *Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities* (see FIL-08-2023, issued on February 23, 2023).[10] The statement highlights key liquidity risks associated with certain sources of funding from crypto-asset-related entities that banking organizations should be aware of. The statement reminds banking organizations to apply existing risk management principles and provides examples of practices that could be effective. The agencies also continue to emphasize that banking organizations are neither prohibited nor discouraged from providing banking services to customers of any specific class or type, as permitted by law or regulation.[11]

The FDIC has actively engaged with institutions that have advised the FDIC of their activities or plans pursuant to FIL-16-2022. In what appears to be a product of changing market conditions (e.g., crypto-asset firm bankruptcies and disruptions described above, challenging macroeconomic conditions, crypto-asset service providers exiting certain business lines), a number of FDIC-supervised institutions have provided updates on previously planned activities and subsequently notified the FDIC that they no longer plan to pursue crypto-related activities. The majority of banks that received pause letters have notified the FDIC that they are no longer actively pursuing crypto-related activity.[12]

CONTEXT REGARDING FDIC ENTERPRISE RISK MANAGEMENT

The FDIC carries out its mission by, among other things, supervising and examining financial institutions for safety and soundness and consumer protection. As part of its Enterprise Risk Management (ERM) function, the FDIC maintains an enterprise-wide Risk Inventory, which is a comprehensive, detailed list of risks that could hamper the FDIC's ability to achieve its goals and objectives. The risk attributes captured in the Risk Inventory include all the components from the GAO Standards for Internal Control in the Federal Government (Green Book) related to risk assessments that are outlined in the OIG draft evaluation report.

The Green Book outlines that a risk assessment "assesses the risk facing the entity as it seeks to achieve its objectives."[13] The risk attributes captured in the Risk Inventory include: identifying the risk, existing controls to mitigate the risk, impact, likelihood, residual risk, and planned mitigations, among other things. The FDIC has identified risks related to staying abreast of

[10] See https://www.fdic.gov/news/financial-institution-letters/2023/fil23008.html
[11] See also, FIL 5-2015, *Statement on Providing Banking Services*, issued January 28, 2015.
[12] In the draft report's discussion of banks that received pause letters, the draft report states that some banks have not received any supervisory feedback. In those instances, banks are either no longer actively pursuing crypto-related activity or banks have: not provided information requested by the FDIC; materially revised the proposed activities and the FDIC has requested updated information; or the proposed activities are broad, complex, and significant (for which FDIC staff are actively working on providing supervisory feedback).
[13] See GAO-14-704G Federal Internal Control Standards, page 7.

industry trends and emerging technology, as well as ongoing efforts related to crypto-assets as controls for those risks.

FDIC MANAGEMENT RESPONSE TO RECOMMENDATIONS

FDIC concurs with the recommendations.

Recommendation 1: OIG recommends that the Crypto Asset Risks Interdivisional Working Group:

1. Establish a plan with timeframes for assessing risks pertaining to crypto-related activities by:
   a) Continuing to identify and document crypto-asset risks,
   b) Performing and documenting an analysis of the identified risks to estimate their significance, and
   c) Developing and documenting strategies to address crypto-asset risks.

Planned Action: The FDIC concurs with this recommendation. The FDIC will utilize the ERM program to continue to identify and document risks that may face the FDIC in achieving its mission associated with supervising banks pursuing crypto-related activities, including the significance of those risks, and as appropriate, will identify any additional supervisory strategies to encourage bank management to appropriately manage risks to the bank.

Estimated Completion Date: The divisions that are members of the Interdivisional Working will provide a memorandum to the Chief Risk Officer documenting the risk assessment by January 30, 2024.

Recommendation 2: OIG recommends that the Director of the Division of Risk Management Supervision (RMS): Update and clarify the supervisory feedback process to (a) establish an expected timeframe for reviewing information and responding to FDIC-supervised institutions pursuant to the Financial Institution Letter and (b) describe what constitutes the completion of its review of its supervised institutions' crypto-related activities.

Planned Action: The FDIC concurs with this recommendation. The RMS Director, in coordination with the Director of the Division of Depositor and Consumer Protection, and in consultation with the Legal Division as appropriate, will update joint internal processes to include instructions for establishing expected timeframes for: 1) reviewing additional information after it is requested and received by the FDIC, and 2) responding to FDIC-supervised institutions after such date that the FDIC determines sufficient information has been received. Those instructions may allow for consideration of factors, such as the complexity of the activities or proposed activities, when establishing expected timeframes. In addition, the FDIC will update joint internal processes to outline expectations for communicating to an institution what constitutes the completion of the case-specific crypto-related activity review process.

Estimated Completion Date: Internal processes will be updated via a joint regional director memorandum that will be issued by January 30, 2024.

Appendix 4 Summary of the FDIC's Corrective Actions

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

Rec. No.	Corrective Action: Taken or Planned	Expected Completion Date	Monetary Benefits	Resolved:[a] Yes or No	Open or Closed[b]
1	The FDIC will utilize the ERM program to continue to identify and document risks that may face the FDIC in achieving its mission associated with supervising banks pursuing crypto-related activities, including the significance of those risks, and as appropriate, will identify any additional supervisory strategies to encourage bank management to appropriately manage risks to the bank.	January 30, 2024	$0	Yes	Open
2	The RMS Director, in coordination with the Director of the Division of Depositor and Consumer Protection, and in consultation with the Legal Division as appropriate, will update joint internal processes to include instructions for establishing expected timeframes for: 1) reviewing additional information after it is requested and received by the FDIC, and 2) responding to FDIC-supervised institutions after such date that the FDIC determines sufficient information has been received. Those instructions may allow for consideration of factors, such as the complexity of the activities or proposed activities, when establishing expected timeframes. In addition, the FDIC will update joint internal processes to outline expectations for communicating to an institution what constitutes the completion of the case-specific crypto-related activity review process.	January 30, 2024	$0	Yes	Open

[a] Recommendations are resolved when —

1. Management concurs with the recommendation, and the OIG agrees the planned corrective action is consistent with the recommendation.
2. Management does not concur or partially concurs with the recommendation, but the OIG agrees that the proposed corrective action meets the intent of the recommendation.
3. For recommendations that include monetary benefits, management agrees to the full amount of OIG monetary benefits or provides an alternative amount and the OIG agrees with that amount.

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

Federal Deposit Insurance Corporation
Office of Inspector General

3501 Fairfax Drive
Room VS-E-9068
Arlington, VA 22226

(703) 562-2035

★★★★★★

The OIG's mission is to prevent, deter, and detect waste, fraud, abuse, and misconduct in FDIC programs and operations; and to promote economy, efficiency, and effectiveness at the agency.

To report allegations of waste, fraud, abuse, or misconduct regarding FDIC programs, employees, contractors, or contracts, please contact us via our Hotline or call 1-800-964-FDIC.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

HISTORY ASSOCIATES INCORPORATED, Plaintiff, vs. FEDERAL DEPOSIT INSURANCE CORPORATION, Defendant.	CIVIL NO.: 24-1857-ACR May 29, 2025 Washington, D.C. 11:00 a.m.

Transcript of Pre-motion Conference
Before the Honorable Ana C. Reyes
United States District Judge

APPEARANCES:

For the Plaintiff: Denis Nicholas Harper, Esquire
Jonathan C. Bond, Esquire
Aaron Hauptman, Esquire
Gibson, Dunn & Crutcher
1700 M Street, NW
Washington, DC 20036

For the Defendant: Jason C. Benton, Esquire
Lina Soni, Esquire
Briena L. Strippoli, Esquire
Federal Deposit Insurance Corporation
Legal Division
3501 Fairfax Drive
Arlington, VA 22226

Also present: Michael Williams, via Zoom

Reported by: Christine T. Asif, RPR, FCRR
Federal Official Court Reporter
333 Constitution Avenue, NW
Washington, D.C. 20001
(202) 354-3247

Proceedings recorded by machine shorthand; transcript produced by computer-aided transcription

a tailored 30(b)(6) deposition and then cross-motions for summary judgement. We think that's the most efficient way to resolve this case expeditiously.

THE COURT: Hold on. Let's just -- how did -- how did we get to -- wasn't there some issue with they didn't get you -- do you have all the documents now that you claim you should have from the original FOIA request?

MR. HARPER: So yeah, as to Count 1, I think they've -- we do not dispute that they provided the full universe of documents. We still dispute some of the redactions, and we can talk about that but --

THE COURT: I'd really rather not. I'd rather you guys figure it out. But go ahead.

MR. HARPER: Okay. So that's as to the document production on Count 1. But Count 2 of our amended complaint is the policy or practice claims and as to that count, they provided us what they said are all the relevant policies. We're not sure they are based on our review of the policies, but it's at least many of the agency's FOIA policies. In our view, they strongly confirm our policy or practice claims as we explained in our --

THE COURT: So what is your policy? Like from reviewing the policies from what you know, what's your position as to what they're doing wrong?

MR. HARPER: So there's a number of things. There's

responsive to FOIA requests that are in their custody. We just don't -- you know, I think that's typically done with litigation holds. I don't think there's a case saying you absolutely need a litigation hold, but you need something, and we don't think they have anything.

THE COURT: Okay. Remind me, didn't I order some productions by some dates and then they asked for an extension and then they sort of basically blew by the extension and then I had to like say now or else? Did that -- was that this case?

MR. HARPER: Yes -- well, what happened in this case was there was -- it's kind of a saga, but at the beginning, you ordered them to produce the pause letters, redacted pause letters, along with a Vaughn index. They produced just the Vaughn index. Then we asked the Court to reinforce its order. The Court reinforced its order. They produced the pause letter with redacted -- very heavy redactions. Then the Court reviewed a sample of those in camera and said --

THE COURT: I was unhappy.

MR. HARPER: -- they, you know, reflected a lack of good faith.

THE COURT: I'm remembering.

MR. HARPER: They came back. They produced more letters, not only -- I think there were 23 originally. They found two new letters. They produced letters with lesser

redactions. Then it was revealed that they had narrowly construed our requests to only be asking --

THE COURT: Yeah.

MR. HARPER: And so they ended up -- you ended up ordering them to produce the full set of documents. That's when the administration change came in, and they, you know, produced, eventually, the full set of documents. But there were dozens more pause letters within the ultimate production.

THE COURT: All right. And do you have -- do you believe -- or do you have all the responsive documents now, or no?

MR. HARPER: I think -- in terms of responsive to our pause letter request, yeah, I think we do have the full -- we think the full universe of documents.

THE COURT: So when does a pattern and policy claim become moot under FOIA? Because, I mean, isn't your claim moot?

MR. HARPER: So putting aside the redactions issue, which we still have some quibbles with the redactions, so I don't think that claim is moot even, but if we assume it were moot, that doesn't moot out the policy or practice claim, because the D.C. Circuit has held that so long as you are subject to these policies or practices once, and you have reasonable likelihood of being subject to them again, and we

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HISTORY ASSOCIATES INCORPORATED, Plaintiff, v. FEDERAL DEPOSIT INSURANCE CORPORATION, Defendant.	Case No. 1:24-cv-1857-ACR

REDACTED DECLARATION OF [redacted] IN SUPPORT OF THE FDIC'S MOTION FOR SUMMARY JUDGMENT

I, [redacted], pursuant to 28 U.S.C. § 1746, declare the following:

1. I am currently employed by the Federal Deposit Insurance Corporation (FDIC) as [redacted].

2. In this position, [redacted].

[redacted].

3. I submit this Declaration in support of the FDIC's Motion for Summary Judgment on Count I. The statements contained in this Declaration are based on my personal knowledge and upon information provided to me in my official capacity.

4. I have been informed that the purposes of FOIA Exemption 8 are to avoid potential harm to public confidence in the banking system, to address concerns that the release of bank-examination information could endanger the fiscal well-being of supervised banks, and to preserve close cooperation and communications between these banks and their regulators.

5. I have been informed that the FDIC's aim in redacting documents in this case has been to provide as much transparency as possible about its supervisory communications with banks that sought to offer crypto-related products or services without divulging the identity of the banks, potential or actual customers of the banks, or potential or actual business partners of the banks.

6. [redacted] at the FDIC, I believe it is reasonably foreseeable that divulging the names of the banks or altering the redactions in the documents released to Plaintiff in a manner that would allow identification of the names of the banks or their potential customers or business partners would negatively affect the FDIC's supervisory relationships with both the institutions whose name was divulged and banks in general. Banks would be less forthcoming in their communications with regulators if they knew that those communications were subject to public disclosure in a FOIA lawsuit and would be less inclined to include sensitive or confidential information, analyses, or commentary in their interactions with the FDIC. I also believe financial institutions would take disclosure of their

identities, or the identities of their actual or potential business partners or customers, into account when considering assurances of confidentiality that the FDIC makes during the supervisory process.

7. [redacted], I believe that the full and frank exchange of information between the FDIC and the entities it supervises is paramount to the success of the agency's supervisory duties. I believe disclosure of the names of banks or information that would reveal bank names or potential business partners or customers would chill that exchange of information and hinder the ability of the agency to meet its statutory duties.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 9th day of July 2025, in [redacted].

[redacted]
Federal Deposit Insurance Corporation

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HISTORY ASSOCIATES INCORPORATED, Plaintiff, v. FEDERAL DEPOSIT INSURANCE CORPORATION, Defendant.	Case No. 1:24-cv-1857-ACR

REDACTED DECLARATION OF [redacted] IN SUPPORT OF THE FDIC'S MOTION FOR SUMMARY JUDGMENT

I, [redacted], pursuant to 28 U.S.C. § 1746, declare the following:

1. I am employed by the Federal Deposit Insurance Corporation (FDIC) [redacted]

2. In this position, [redacted]

[redacted].

3. I submit this Declaration in support of the FDIC's Motion for Summary Judgment on Count I. The statements contained in this Declaration are based on my personal knowledge and upon information provided to me in my official capacity.

4. I have been informed that the purposes of FOIA Exemption 8 are to avoid potential harm to public confidence in the banking system, to address concerns that the release of bank-examination information could endanger the fiscal well-being of supervised banks, and to preserve close cooperation and communications between these banks and their regulators.

5. I have been informed that the FDIC's aim in redacting documents in this case has been to provide as much transparency as possible about its supervisory communications with banks that sought to offer crypto-related products of services without divulging the identity of the banks, potential or actual customers of the banks, or potential or actual business partners of the banks.

6. [redacted] at the FDIC, I believe it is reasonably foreseeable that divulging the names of the banks or altering the redactions in the documents released to Plaintiff in a manner that would allow identification of the names of the banks or their potential customers or business partners would negatively affect the FDIC's supervisory relationships with both the institutions whose name was divulged and banks in general. Banks would be less forthcoming in their communications with regulators if they knew that those communications were subject to public disclosure in a FOIA lawsuit and would be less inclined to include sensitive or confidential information, analyses, or commentary in their interactions with the FDIC. I also believe financial institutions would take disclosure of their

identities, or the identities of their actual or potential business partners or customers, into account when considering assurances of confidentiality that the FDIC makes during the supervisory process.

7. [redacted]. [redacted], I believe that the full and frank exchange of information between the FDIC and the entities it supervises is paramount to the success of the agency's supervisory duties. I believe disclosure of the names of banks or information that would reveal bank names or potential business partners or customers would chill that exchange of information and hinder the ability of the agency to meet its statutory duties.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 8th day of July 2025, in [redacted].

[redacted]
Federal Deposit Insurance Corporation

Series:	**Electronic Information Systems**
Code:	**EIS1022**
Title:	**Regional Automated Document Distribution and Imaging System (RADD)**
Description:	**RADD is a document imaging, routing, and storage system that captures, indexes, distributes and stores electronic documents related to official bank correspondence and other supervisory business records.**

Inputs Section

Input Code:	**EIS1022.01.01**
Input Title:	**Regional Automated Document Distribution and Imaging System (RADD)-Input-01**
Description:	**Manual. Documents related to the supervision of financial institutions are scanned directly into RADD, which includes information relating to exams, correspondence, legal documents, and enforcement actions.**
Type	**Temporary**
Cutoff Type	
Cutoff:	
Retention:	
Retention Type	
Disposition Instructions:	**Destroy hard copy source documents in a secure manner no longer than 60 days after successfully scanned into RADD unless subject to a preservation notice or legal hold.**

Input Code:	**EIS1022.01.02**
Input Title:	**Regional Automated Document Distribution and Imaging System (RADD)-Input-02**
Description:	**Electronic documents imported directly into RADD from internal and external sources.**
Type	**Temporary**
Cutoff Type	
Cutoff:	
Retention:	
Retention Type	
Disposition Instructions:	**Delete electronic source documents immediately when successfully transferred into RADD unless subject to a preservation notice or legal hold.**

Master Files Section

Master File Code:	**EIS1022.02.01**
Master File Title:	**Regional Automated Document Distribution and Imaging System (RADD)-Master File-01**
Description:	**Supervisory Financial Records** **RADD includes FDIC report of examinations (Safety & Soundness, Information Technology, Compliance, etc.), all correspondence to and from institutions, other agency reports of examinations (all types); FDIC new insurance applications; applications such as Brokered Deposit Waiver, Merger, Section 19, and Section 32; approved applications; denied new bank applications, memoranda**

	prepared by Regional Offices; bank holding company inspection reports; problem bank files; supplemental bidders lists; delegated authority report; analyses; and other supervisory information.
Type	Long Term
Cutoff Type	
Cutoff:	
Retention:	
Retention Type	
Disposition Instructions:	Delete when 30 years old, based on document date (SUP1000). Exceptions: • Change in Control files - Disposition: 10 years (SUP1030) • Consumer Complaint and Inquiry Files - Disposition: 7 years (SUP7000) • Denied or Withdrawn Applications (other than new bank applications) - Disposition: 10 years (SUP1010) • Enforcement Actions (final agreement) - Disposition: 15 years (SUP5110) • Officer's Questionnaires - Disposition: 10 years (SUP1060) • Transfer Agent Records - Disposition: 10 years after deregistration (SUP2000) • Workpapers - Disposition: Delete electronic workpapers for continuous examinations, including in process examinations, at the conclusion of three examination cycles. For point-in-time examinations conducted on an alternate basis with a state, delete electronic and destroy hardcopy workpapers at the conclusion of two FDIC-led examinations unless needed to support ongoing business needs. (SUP1050)

Outputs Section

Output Code:	EIS1022.03.01
Output Title:	Regional Automated Document Distribution and Imaging System (RADD)-Output-01
Description:	Reports and other on-line system data used to aid in off-site analysis and on-site examination of banks and bank holding companies.
Type	Temporary
Cutoff Type	
Cutoff:	
Retention:	
Retention Type	
Disposition Instructions:	Destroy/delete when no longer needed, superseded or obsolete.

Close

LEGAL DIVISION
Federal Deposit Insurance Corporation

November 27, 2024

Electronic Delivery: jgart1@historyassociates.com

Jason H. Gart, Ph.D.
History Associates Incorporated
7361 Calhoun Place, Suite 310
Rockville, Maryland 20855

RE: *FOIA Appeal No. 2025-FDIC-APPEAL-0002*
Original Request: FOIA Log Number 2023-FDIC-FOIA-00395
FOIA/PA Group Response: September 5, 2024
Date of Appeal: October 15, 2024

Dear Mr. Gart:

This is in response to History Associates Incorporated's ("History Associates") administrative appeal under the Freedom of Information Act ("FOIA"). On March 31, 2023, you submitted your initial FOIA request to the Federal Deposit Insurance Corporation ("FDIC"). The FDIC responded to that request on September 5, 2024. You appealed the FDIC's decision on October 15, 2024.

Your appeal concerns the following request:

1. All documents and communications, both written and electronic, exchanged between members of the FDIC Board of Directors and/or FDIC staff members, including, but not limited to staff of the Division of Administration, Division of Complex Institution Supervision and Resolution, Division of Depositor and Consumer Protection, Division of Finance, Division of Information Technology, Division of Insurance and Research, Division of Resolutions and Receiverships, Division of Risk Management Supervision, the Legal Division, Office of Communications, Office of Legislative Affairs, Office of Risk Management and Internal Controls, and Office of Inspector General, and staff of the following federal and state agencies:

    a. U.S. Department of the Treasury
    b. Office of the Comptroller of the Currency
    c. Securities and Exchange Commission
    d. United States Federal Reserve System
    e. National Economic Council

f. U.S. Department of Justice Office of the Attorney General
g. New York State Department of Financial Services
h. California Department of Financial Protection and Innovation

2. That refers, relates, or discusses the February 23, 2023, joint statement of the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation ("FDIC"), and the Office of the Comptroller of the Currency, entitled "Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities," and available at the following link: https://www.fdic.gov/news/press-releases/2023/pr23010a.pdf,

3. And was sent between the publication of the joint statement on February 23, 2023, and the date you process this request.

After considering your request, the FOIA/Privacy Act Group ("FOIA Group") responded to you on September 5, 2024. The FOIA Group released, in part, 28 pages it determined to be responsive, but redacted portions it determined were exempt from disclosure under FOIA Exemptions 5, 7(E), and 8, 5 U.S.C. § 552(b)(5), (b)(7)(E), and (b)(8).2.[1] The FOIA Group determined that the redacted information should be withheld because it is reasonably foreseeable that disclosure would harm an interest protected by an exemption described in subsection (b) of the FOIA, 5 U.S.C. § 552(b).

You appealed the FOIA Group's decision on October 15, 2024. In your appeal you maintain that the FDIC failed to adequately show that the exempt records "are truly subject to the claimed exemptions" because the agency's statements are "conclusory" and lack "reasonable specificity." Further, you maintain that the FDIC should produce any "reasonably segregable" non-exempt portions of each withheld record. Finally, you assert that the FDIC failed to establish that it can reasonably foresee the specific harms that would result from releasing the withheld materials.

[1] The FOIA Group also referred additional records to other agencies to respond directly to you.

I have reviewed your initial request, the FOIA Group's determination and your appeal. Based on my review, I have determined that it would be appropriate for the FDIC to re-examine and further consider your request to, where possible, identify non-exempt material that is reasonably segregable. Accordingly, your request has been remanded to the FOIA Group for further action and an additional response to you. Please be advised that you may seek judicial review of the FDIC's final FOIA determination in the United States District Court under 5 U.S.C. § 552(a)(4)(B).11. [2]

Sincerely,

ANDREW DOBER

Digitally signed by ANDREW DOBER
Date: 2024.11.27 11:23:01 -05'00'

Andrew J. Dober
Senior Counsel

[2] You also may contact the Office of Government Information Services ("OGIS") at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877- 684-6448; or facsimile at 202-741-5769.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HISTORY ASSOCIATES INCORPORATED, Plaintiff, v. FEDERAL DEPOSIT INSURANCE CORPORATION, Defendant.	Case No. 1:24-cv-1857-ACR

[PROPOSED] ORDER

Upon consideration of Defendant's Motion for Summary Judgment, Motion to Dismiss, the responses thereto, and the entire record of this proceeding, it is

ORDERED that Defendant's Motion for Summary Judgment on Count I of Plaintiff's Amended Complaint is **GRANTED**. It is

FURTHER ORDERED that Defendant's Motion to Dismiss Count II of Plaintiff's Amended Complaint is **GRANTED**.

This action is dismissed with prejudice.

Dated: _____

_____
The Honorable Ana C. Reyes
United States District Judge