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The Library's Anti-Harassment Policy Has Many Strengths, Although Steps Are Needed to Improve Policy Implementation

Office of the Inspector General  
Library of Congress  
Memo

Date June 17, 2022

To Dr. Carla Hayden, Librarian of Congress

From Kimberly Byrd, Inspector General

Subject Final Audit Report – The Library's Anti-Harassment Policy Has Many Strengths, Although Steps Are Needed to Improve Policy Implementation, Report No. 2020-PA-102

On December 6, 2018, the United States Senate Committee on Rules and Administration asked the Library of Congress (Library) Office of the Inspector General (OIG) to review the handling of sexual harassment cases at the Library. In July 2019, we provided the Committee with responsive information. [footnote 1] In December 2020, we issued a nonpublic report that was also responsive to the Committee's request.[footnote 2] The purpose of this audit is to complete the review requested by the Committee.

1 For example, we provided the Committee with unaudited information on reports of alleged sexual harassment at the Library over a 10-year period.

2 We assessed an anonymous hotline complaint that alleged sexual harassment in a Library reading room. See The Library's Response to An Anonymous Sexual Harassment Complaint Involving Reading Room Staff Managing Patrons' Viewing of Internet Pornography, 2020-SP-103, December 2020.

3 Our scope did not include the Office of Congressional Workplace Rights, which is not a part of the Library. The Congressional Accountability Act of 1995 Reform Act allows Library employees to file a complaint either with the Library or the Office of Congressional Workplace Rights.

This transmits our final report for OIG's audit of the handling of sexual harassment cases at the Library. The audit's objectives were to (1) evaluate policies, procedures, and strategic planning activities related to the Library's anti-harassment program, particularly as they related to preventing, eliminating, and punishing sexual harassment; (2) assess whether the Library's anti-harassment program adhered to best practices; and (3) examine relevant training practices. [footnote 3]

Based on management's written response to the draft report, we consider all of the recommendations resolved. Your responses provided an action plan for the implementation of each recommendation, in accordance with Library of Congress Regulation 9-160, Rights and Responsibilities of Library Employees to the Inspector General, §6.A.

We appreciate the cooperation and courtesies extended by the Library's Office of Equal Employment Opportunity and Diversity Programs and Office of the General Counsel.

cc Ryan Ramsey, Chief of Staff

## Summary

The United States Senate Committee on Rules and Administration asked us to review the handling of sexual harassment cases at the Library. The audit's objectives were to (1) evaluate policies, procedures, and strategic planning activities related to the Library's anti-harassment program, particularly as they related to preventing, eliminating, and punishing sexual harassment; (2) assess whether the Library's anti-harassment program adhered to best practices; and (3) examine relevant training practices.

## What the Audit Found

### OIG's Survey of Library Employees

We surveyed Library employees in April 2021 on sexual harassment or other related unwelcome behavior. We concluded that Library management was not aware of the extent to which employees had experienced or were concerned about alleged sexual harassment or other related unwelcome behavior. The Library has issued anti-discrimination notices to employees stating, among other things, that it is committed to preventing and addressing all forms of discriminatory harassment.

### The Library's Anti-Harassment Policy

The Library's anti-harassment policy contains many of the elements that model equal employment opportunity (EEO) programs possess. This demonstrates a commitment to create and maintain a culture of intolerance for harassment. We nonetheless recommend that the Library make improvements to how it documents and communicate information about how it maintains the confidentiality of the Library's anti-harassment, EEO complaint, and Alternative Dispute Resolution (ADR) processes. The Library identifies the Office of Equal Employment Opportunity and Diversity Programs (EEO/DP) as responsible for these processes.

### Clarifying and Communicating Library Policy

The Library and EEO/DP should take steps to clarify Library policy and improve how it communicates information about the anti-harassment, EEO complaint, and ADR processes for the benefit of Library employees, particularly for those employees unfamiliar with the processes. We make recommendations that would entail EEO/DP documenting its role and responsibilities in its standard operating procedures for select areas, the Library updating out-of-date information in policies, and EEO/DP implementing new procedures to improve its information sharing with participants in the EEO complaint process.

## Strengthening Library and EEO/DP Management of the EEO Program

The Library and EEO/DP should strengthen their management of the Library's EEO program. In the report, we identify deficiencies that pose a risk of regulatory noncompliance, describe the one instance of regulatory noncompliance we found, and outline other program vulnerabilities. We make recommendations to address each of the deficiencies and vulnerabilities we identified.

### EEO/DP's Strategic Mission

EEO/DP should define its overall mission in alignment with fulfilling the Library's mission and then it should align whatever goals and performance measures it has in support of its stated mission.

### Recommendations

The Library and EEO/DP took immediate steps to address recommendations included in a preliminary version of this report provided to the Library in January 2022. We describe the steps taken in Appendix B: Actions Taken by the Library and EEO/DP in Response to a Preliminary Version of This Report. We make 23 additional recommendations in this report to help the Library and EEO/DP improve the effectiveness of their implementation and management of the Library's anti-harassment, EEO complaint, and ADR processes.

### Management Comments

The Library concurred with the report's recommendations, as shown in Appendix C. The Library's response to the report stated its commitment to diversity and inclusion and noted that a safe and secure workplace and diverse workforce are critical to the execution of the Library's mission.

Additionally, the Library stated, "Due to the scope of the OIG's anonymous survey (such as excluding OCWR data) and inconsistencies among survey responses, the Library cannot come to the same conclusion as the report has about the extent to which employees have experienced or were concerned about alleged sexual harassment or other related unwelcome behavior."

As we have explained to Library representatives, we obtained guidance from survey methodologists at the Government Accountability Office while preparing the survey. With the help of these experts, the survey captured the information we share in the report.

### Background

### Objectives

On December 6, 2018, the United States Senate Committee on Rules and Administration asked us to review the handling of sexual harassment cases at the Library. In July 2019, we provided the Committee with responsive information.[footnote 4] In December 2020, we issued a nonpublic report that was also responsive to the Committee's request.[footnote 5] The purpose of this audit is to complete the review requested by the Committee.

The audit's objectives were to (1) evaluate policies, procedures, and strategic planning activities related to the Library's anti-harassment program, particularly as they related to preventing, eliminating, and punishing sexual harassment; (2) assess whether the Library's anti-harassment program adhered to best practices; and (3) examine relevant training practices.[footnote 6]

## Harassment and Sexual Harassment

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

## Workplace Harassment Is a Persistent Problem

Sexual harassment is a persistent problem in the federal workplace, which often goes unreported. The U.S. Commission on Civil Rights reported that an estimated 1 in 7 federal employees experienced sexually harassing behaviors at work between 2016 and 2018, according to a 2018 Merit Systems Protection Board survey.[footnote 7] A common response by those who experience workplace sexual harassment is to avoid the harasser, deny or downplay the gravity of the situation, or attempt to ignore, forget, or endure the behavior. The least common response is to either report the harassment or file a formal legal complaint. Employees who experience harassment do not report it because they fear disbelief of their claim, inaction on their claim, blame, or social or professional retaliation.[footnote 8]

## The Business Case for Strengthening Anti-Harassment Activities

Sexual harassment has physical and psychological consequences, such as depression, stress, anxiety, and high blood pressure. These conditions negatively affect the victim's health and can lead to missed workdays, reduced productivity, and increased turnover. Sexual harassment can also result in an employee questioning their skills and abilities as a worker. Together, these results can push valuable workers out of their jobs, which can be costly to the employer and employee.[footnote 9]

## The Office of Equal Employment Opportunity and Diversity Programs

Beyond our anonymous employee survey on sexual harassment or other related unwelcome behavior and review of the Library's equal employment opportunity-related policies, our audit largely focused on the Library's Office of Equal Employment Opportunity and Diversity Programs (EEO/DP). The Library identifies EEO/DP in its regulations as the "responsible office" for the anti-harassment, equal employment opportunity (EEO) complaint, and alternative dispute resolution (ADR) processes.[footnote 10] We examined these three processes for how the Library handles allegations of harassment. EEO/DP consists of eight people, including an EEO/DP Chief, an EEO/DP Supervisor, two EEO Specialists, a Diversity and Inclusion Advisor, a Program Analyst, an Interpreting Services Program Manager, and a Sign Language Interpreter. Individuals who want to report sexual harassment at the Library, should contact EEO/DP at (202) 707-6024 or EODP@loc.gov. The Librarian's Chief of Staff oversees EEO/DP.

## Library of Congress Policies and Procedures

We distinguish in this report between policies and procedures. Policies

typically provide broad guidance and are part of an organization's governance structure. The Library uses regulations and directives to outline its policies. These include a directive that outlines the Library's anti-harassment and retaliation policy[footnote 11] and describes its anti-harassment process. They also include regulations that separately outline and describe the EEO complaint[footnote 12] and ADR processes.[footnote 13] Procedures are distinct from policies, but are linked to them. They provide instructions on how things get done; they move from a broad view of a process down to the detailed steps of how it operates. A procedure provides a method of accomplishing a consistent performance or result and can typically be described as a sequence of steps used to execute a process.[footnote 14]

Library policy for the anti-harassment, EEO complaint, and ADR processes can include procedures. For example, Library of Congress Regulation (LCR) 11-311, Resolving Complaints of Discrimination at the Library, outlines procedures for the EEO complaint process, but, as discussed in this audit report, the regulation does not outline all of the procedures needed to instruct EEO/DP staff on how to accomplish consistent day-to-day performance. We concluded that in certain instances EEO/DP should modify or augment its standard operating procedures to provide this additional guidance to EEO/DP staff. Therefore, when we recommend changes to procedures, we are referencing changes needed in EEO/DP's standard operating procedures and not to those procedures outlined in Library policy.

## Findings

### OIG's Survey Identified Employee Concerns About the Library's Handling of Alleged Sexual Harassment or Other Related Unwelcome Behavior

We conducted an anonymous survey of Library employees on sexual harassment or other related unwelcome behavior in April 2021.[footnote 15] Before presenting our survey results, we underscore the subjective nature of sexual harassment, even though we tried to mitigate this by providing our survey participants with a definition of sexual harassment that aligned with the Library's definition in Library of Congress Directive (LCD) 9-120.1, Anti-Harassment and Retaliation Policy.[footnote 16]

A portion of our survey respondents indicated they experienced sexual harassment or other related unwelcome behavior, but because of the subjective nature of sexual harassment, and that we also inquired about other related unwelcome behavior, what they experienced may not meet a strict definition of sexual harassment. When investigations into allegations of sexual harassment occur, they involve looking at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Further, based on our analysis of Library data, not all of these respondents notified the Library about their experiences or filed disputes or complaints of discrimination. Rather, some may have elected to address the behavior through informal discussions or ignoring the occurrence(s). We also noted that 37 of our respondents indicated that they considered leaving their positions at the Library because of their experiences. We make recommendations in subsequent sections of this report to help the Library respond to the concerns employees expressed about sexual harassment or other related unwelcome behavior in our survey.

Our survey respondents made positive comments about the Library's work environment, as shown in Table 1.

Table 1: Survey Respondents Referenced the Library's Anti-Harassment Work Environment

"I've been at the Library for 9 years and I've never encountered sexual harrassment

[sic] from Library staff... I'm very thankful for the Library's policies and procedures around sexual harassment [sic]. They make me feel safe and empowered. Thank you.”

“I have worked here since the 80s and when I look back I am shocked at what we used to put up with as young women. The situation is much improved for the young people hired more recently. It is a cultural change and very welcome.”

“I have made a formal sexual harassment [sic] complaint against... and the procedure was professional, I felt heard, and actions were taken to make me feel safe. I wasn't [sic] sure how to proceed so my supervisor directed me to the proper email address for submitting a complaint.”

“I experienced a lot of sexual harassment in previous jobs but never in my 30+ years at the Library.”

“I've been at the LC for 18 years, and I feel we are better informed in the past couple years than we were 10 years ago.”

Table 1: Survey Respondents Referenced the Library's Anti-Harassment Work Environment  
Source: OIG's April 2021 Library Employee Survey of Sexual Harassment or Other Related Unwelcome Behavior

However, 100 survey respondents (out of 1,155 completed surveys)[footnote 17] indicated they had experienced alleged sexual harassment or other related unwelcome behavior over roughly the two years leading up to the survey. We asked, “In roughly the last two years (less if you came to the Library more recently), have you personally experienced sexual harassment or other related unwelcome behavior as a Library employee?”[footnote 18] We did not ask those who answered affirmatively to identify the number of incidents, but we did ask them about what they experienced. They indicated they most often experienced (1) unwelcome sexual teasing, jokes, comments, or questions and (2) unwelcome invasion of personal space (e.g., touching, crowding, leaning over). Fifty-six of the 100 respondents indicated they had experienced each of these behaviors.[footnotes 19, 20] Thirty-seven of these respondents indicated they considered leaving their positions at the Library. Sixty-six of them reported that their emotional, psychological, and social well-being declined.[footnote 21] The Library had record of nine reports of alleged sexual harassment in total for the same time period, three of which we received via our hotline.[footnote 22]

Survey respondents expressed concern about the Library's handling of alleged sexual harassment or other related unwelcome behavior, as demonstrated by their comments shown in Table 2:[footnote 23]

Table 2: Survey Respondents Expressed Concern about the Library's Handling of Alleged Sexual Harassment or Other Related Unwelcome Behavior

“Many Library colleagues I know, especially employees at lower GS levels, younger employees, and some women, are afraid to report harassment because women who speak up at the Library tend to get a reputation as difficult or whiny...”

“My supervisor (at the time - I no longer report to this person) told me that the person who harassed me was known for this behavior and since they were a high-level employee, nothing was to be done about it and we should not report it...”

“I don't think the Library's upper management is supportive of the idea of the that [sic] employees can have legitimate complaints and I feel that this has a “chilling” effect because it let's [sic] folks down the line know that complaining is pointless.”

“I would like to share ... instances of harassment/aggression that I believe were dealt with inadequately... Everyone knew about his behavior as it was obvious, but no action was taken other than to move him into a different role.”

“Also, in some cases, it appears that, in the recent past, sexual harassment has

been reported and management has not taken action to stop the harasser. I think people need reassurance that the system is different now ... Their faith in this system -- certainly, my faith in this system -- has been shaken.”

## Table 2: Survey Respondents Expressed Concern about the Library’s Handling of Alleged Sexual Harassment

Source: OIG’s April 2021 Library Employee Survey of Sexual Harassment or Other Related Unwelcome Behavior

Our survey respondents also demonstrated their concern through the following survey results:

471 respondents (41 percent of 1,155 completed surveys) expressed concern about people getting away with sexual harassment or other related unwelcome behavior at the Library,[footnote 24]

325 respondents (28 percent) indicated the Library was not taking sufficient steps to prevent sexual harassment or other related unwelcome behavior,[footnote 25] and

182 respondents (16 percent) expressed concern that they would experience sexual harassment or other related unwelcome behavior at the Library.[footnote 26]

The experiences of alleged sexual harassment or other related unwelcome behavior described in our survey and their negative impact, along with the concerns expressed by employees through our survey, create a strong business case for the Library to strengthen its anti-harassment activities.

During the audit, in January of 2021 and 2022, the Library issued Anti-Discrimination Notices to employees.[footnote 27] The notices stated, among other things –

The Library is committed to preventing and addressing all forms of discriminatory harassment and to ensuring that EEO principles are fundamental to Library culture. Everyone—employees, interns, volunteers, contractors, researchers, and visitors—is expected to help make the Library a respectful environment free from offensive behavior.

Library management has set the tone that sexual harassment will not be tolerated [footnote 28] and demonstrated committed and engaged leadership, which according to the Equal Employment Opportunity Commission (EEOC) is an essential component of a successful harassment prevention strategy.[footnotes 29,30]

According to the Government Accountability Office’s (GAO) internal control guidance, management should identify, analyze, and respond to risks related to achieving objectives.[footnote 31] For this audit, we focused on the Library’s objective as stated in the Library’s Anti-Discrimination Notice to prevent and address discriminatory harassment, including sexual harassment. Through our survey, we identified a risk to the Library achieving this objective—Library management was not aware of the extent to which employees had experienced or were concerned about alleged sexual harassment or other related unwelcome behavior. In the subsequent sections of this report, we present the results of our audit and make recommendations to help the Library respond.

The Library of Congress Anti-Harassment Policy  
Contains Many of the Elements in Model Equal  
Employment Opportunity Programs

Based on best practices identified by EEOC, the Library’s anti-harassment policy contains many of the elements that model EEO programs possess. This demonstrates a commitment to create and maintain a culture of intolerance for

harassment.[footnote 32] We nonetheless recommend that the Library document EEO/DP's role and responsibilities for preserving confidentiality for the anti-harassment, EEO complaint, and ADR processes in EEO/DP's standard operating procedures in fulfillment of Library policy and communicate more complete information about confidentiality to Library employees. In the next finding, we address the need for the Library and EEO/DP to clarify Library policy for the anti-harassment process.

According to EEOC, model anti-harassment EEO programs possess:

A clear explanation of prohibited conduct;

Assurance that employees who make claims of harassment or provide information related to such claims will be protected against retaliation;

A complaint process that provides a prompt, thorough, and impartial investigation;

Assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred;

Assurance that employers will protect the confidentiality of the individuals bringing harassment claims to the extent possible; and

A clearly described complaint process that provides accessible avenues for complainants.[footnote 33]

We assessed the Library's policies in relation to each element:

Library policy provides a clear explanation of prohibited conduct.

The Library has an anti-harassment policy that defines sexual harassment.

The Library of Congress does not tolerate discriminatory harassment of any type. The Library is committed to preventing and addressing all forms of discriminatory harassment on the basis of race, color, national origin, religion, sex (including sexual orientation and gender identity), age (40 and over), [and] disability.[footnote 34]

"Sexual harassment" means unwelcome behavior of a sexual nature, including but not limited to, unwelcome sexual advances, requests for sexual favors, physical conduct of a sexual nature, or similar behavior. This definition applies regardless of the sex of the individuals involved. The harasser may be a co-worker; a contractor or other non-employee; or a supervisor, manager or other agent of the Library including a supervisory employee who does not supervise the victim (collectively referred to as "managers"). Some examples of what may constitute sexual harassment are:

threatening or taking adverse employment action, such as demotion or removal, if sexual favors are not granted;

demands for sexual favors in exchange for favorable or preferential treatment;

unwelcome and repeated flirtation, propositions or advances;

whistling, leering, or improper gestures; offensive, derogatory or degrading remarks;

sex or sex-based pranks; and the

display of sexually suggestive objects or pictures in the work area.[footnote 35]

Library policy assures employees that the Library will protect them against retaliation when they make claims of harassment or provide information related to such claims.

The Library states:

It is unlawful to retaliate against employees who report harassment or who participate in investigations of reported incidents of harassment. The Library does not tolerate retaliation against employees who report harassment or who participate in investigations of reported incidents of harassment. Individuals found to have engaged in retaliation will be subject to disciplinary action, up to and including removal.[footnote 36]

Library policy commits to a process that will provide a prompt and appropriate inquiry.

The Library states:

The Library is committed to conducting a prompt and appropriate inquiry into, or investigation of, reports of harassment...[footnote 37]

The Library is legally obligated to conduct a prompt inquiry into all allegations of harassment even if an employee declines to file a complaint or grievance regarding an allegation of harassment, or if the employee requests that an inquiry not occur...[footnote 38]

Formal complaints and grievances are investigated pursuant to the relevant collective bargaining agreement or Library regulation.[footnote 39]

Library policy assures employees that the Library will take immediate and appropriate corrective action when harassment has occurred.

The Library states:

Employees found to have engaged in harassment will be subject to disciplinary action, up to and including removal...[footnote 40]

Managers must not tolerate harassment and must take appropriate remedial action to ensure that the harassment stops and does not recur...[footnote 41]

In coordination with EEO/DP, the Office of the General Counsel will provide guidance to management on how to conduct an appropriate inquiry and the Human Capital Directorate will provide guidance to management on how to take appropriate remedial action, including disciplinary action against the harasser.[footnote 42]

EEO/DP has not adequately communicated Library policy on confidentiality via its intranet website across the anti-harassment, EEO complaint, and ADR processes or adequately documented in its standard operating procedures the responsibilities of EEO/DP staff to preserve confidentiality.

For the benefit of employees unfamiliar with these processes, EEO/DP should provide more complete information about the confidentiality of the anti-harassment, EEO complaint, and ADR processes on EEO/DP's intranet website. [footnote 43] This will help to inform employees of their rights and responsibilities.

EEO/DP should also document its role and responsibilities in maintaining confidentiality during the processes in its standard operating procedures.[footnote 44] In reviewing EEO/DP's standard operating procedures, we determined that they did not provide instructions to EEO/DP staff on what activities to perform to

preserve confidentiality for the three processes.

Our survey respondents expressed concern about confidentiality and anonymity when reporting alleged sexual harassment or other related unwelcome behavior, as shown in Table 3, demonstrating the need for EEO/DP to make more complete information about confidentiality available to employees and to document its role and responsibilities in procedures.[footnote 45] We also address anonymity later in this section in the discussion of a proposal we made previously for EEO/DP to establish a mechanism to receive anonymous allegations of sexual harassment.

Table 3: Survey Respondents Expressed Concern About Confidentiality and Anonymity When Reporting Alleged Sexual Harassment or Other Related Unwelcome Behavior

“I don't feel safe disclosing sexual harassment via the proscribed [sic] reporting channels. In years past, when I've reported things, the person I've complained about has always found out. Anonymity is a big concern...”

“...Also, staff need to know the reporting will be safe, and how it will be safe.”

“I was concerned that if I reported the incidents up, that my identity would become attached to the report.”

“...My supervisor has also stated that complaints have been filed against her in the past, that she found out who the complainant was, and has held a grudge ever since. I hope you can see why it is absolutely pointless, if not dangerous to my career, to report sexual harassment to my supervisor.”

“I was worried my supervisor would find out and that I would experience negative consequences as a result of the report. My supervisor is very close with the harasser and I can't afford to risk negative consequences by filing a report...”

Table 3: Survey Respondents Expressed Concern About Confidentiality and Anonymity When Reporting Sexual

Harassment or Other Related Unwelcome Behavior

Source: OIG's April 2021 Library Employee Survey of Sexual Harassment or Other Related Unwelcome Behavior

#### The Anti-Harassment Process

Library policy for the anti-harassment process states that managers who become aware of possible harassment must contact EEO/DP for consultation and guidance on handling the matter, even if employees have asked managers to keep the matter confidential.[footnote 46] In this way, the Library does not maintain confidentiality in order to meet its legal obligation to conduct a prompt inquiry. However, Library policy also states that confidentiality will be maintained to the extent practicable during the management inquiry into the harassment.[footnotes 47,48]

The section of EEO/DP's standard operating procedures that applies to the Library's anti-harassment process only references the first part—that managers are required to report allegations to EEO/DP. It does not state that the Library will maintain confidentiality to the extent practicable during the management inquiry.[footnote 49] EEO/DP's procedures also do not outline the responsibilities of EEO/DP staff to help maintain confidentiality, in coordination with the Office of General Counsel, which provides guidance to management on how to conduct a proper inquiry.

Additionally, EEO/DP's intranet webpage on the anti-harassment process communicates that managers are required to report allegations of harassment, but does not state, for the benefit of Library employees unfamiliar with the Library's anti-harassment process, that the Library will maintain confidentiality to the extent practicable during the management inquiry.[footnote 50]

## The EEO Complaint Process

Library policy is not entirely clear on the extent to which its EEO complaint counseling is confidential, making it important for the Library to be clear on this matter in EEO/DP's standard operating procedures and website. On the one hand, Library policy states that, "Counselors ... seek resolution of such matters on as informal and confidential a basis as possible..."[footnote 51] (emphasis added). On the other hand, Library policy states, "The counseling process shall be informal and at the request of the complainant confidential"[footnote 52] (emphasis added).

EEO/DP's intranet webpage on the EEO complaint process and its standard operating procedures do not provide greater clarity. The webpage states that counseling is confidential "at the request of the complainant,"[footnote 53] which could create confusion for Library employees unfamiliar with the process. EEO/DP's standard operating procedures state "employees may also seek confidential consultations."[footnote 54] Neither state that EEO/DP will endeavor to seek resolution through counseling on as confidential a basis as possible as a matter of course. EEO/DP's procedures also do not outline the responsibilities of EEO/DP staff to help preserve confidentiality during counseling.

## The ADR Process

EEO/DP's intranet webpage on the ADR process states that it "protects confidentiality,"[footnote 55] which is helpful information for employees unfamiliar with the ADR process since not all of Library policy is clear on this point.[footnote 56] The section of EEO/DP's standard operating procedures that applies to the ADR process states that it is confidential, but does not outline the responsibilities of EEO/DP staff and Library employees to maintain its confidentiality.56F57

## An EEO Hotline

In December 2020, we reported on the Library's response to an anonymous sexual harassment complaint we received via our hotline. The complaint was about certain patrons viewing internet pornography in a Library reading room.[footnotes 58,59] We outlined multiple actions for EEO/DP to consider taking, such as establishing a mechanism like our OIG hotline to enable employees to report EEO-related concerns directly to EEO/DP on an anonymous basis if they choose. Establishing a means for employees to submit reports anonymously may help them feel safer about reporting alleged discrimination, including alleged sexual harassment, and reduce their real or perceived fear of retaliation, a fear that the quotes in Table 3 above convey. The EEO/DP Chief informed us during the audit that EEO/DP did not follow up on establishing such a mechanism or on the other actions we proposed. EEO/DP does have a prominent electronic button on its intranet homepage that enables Library employees to report alleged harassment directly to EEO/DP via email, but employees cannot maintain their anonymity using this mechanism.[footnote 60]

## Recommendations

We recommend the Library:

- 1) Document EEO/DP's role and responsibilities for preserving confidentiality for the anti-harassment, EEO complaint, and ADR processes in EEO/DP's standard operating procedures in fulfillment of Library policy, including the responsibilities of EEO/DP staff to preserve confidentiality during the processes.
- 2) For the benefit of Library employees unfamiliar with the Library's anti-harassment, EEO complaint, and ADR processes, communicate more complete information about the confidentiality of the processes on EEO/DP's intranet website.

## EEO/DP Should Take Steps to Clarify Library Policy

At the end of January 2022, we provided the Library with a preliminary version of this report and the Library took immediate steps to address issues we raised related to it clarifying Library policy. See Appendix B for a summary description of the issues we identified and the actions taken by the Library in response. We report below on the only outstanding issue we identified. EEO/DP should document its role in its standard operating procedures when employees contact it directly about alleged harassment, including sexual harassment, but do not intend to file a dispute or complaint of harassment in a timely manner. We originally identified other issues associated with the EEO complaint process, the Library's means to resolve complaints relating to EEO discrimination, and with the ADR process, the Library's method of settling disputes through informal discussions or mediation. As shown in Appendix B, the Library addressed these issues.

#### The Library Needs to Document EEO/DP's Role in the Anti-Harassment Process

While Library policy assigns specific responsibilities to managers upon receipt of a report of alleged harassment, it does not do the same for EEO/DP. Per the Library's anti-harassment policy, the Library does not tolerate discriminatory harassment, including sexual harassment,[footnote 61] and commits to conducting "a prompt and appropriate inquiry into, or investigation of, reports of harassment." [footnote 62] Employees and non-employees are "strongly encouraged" but not required to immediately report instances of harassment to "management or the Office of Equal Employment Opportunity and Diversity Programs (EEO/DP)" (emphasis added). [footnote 63] Upon hearing from employees about alleged harassment, managers "must take appropriate remedial action to ensure that the harassment stops and does not recur." [footnote 64] Managers "must" contact EEO/DP for consultation and guidance on handling the matter and "are expected" to advise an employee who is the alleged victim of harassment. [footnote 65] The Library is "legally obligated to conduct a prompt inquiry" into all allegations of harassment regardless of whether the employee wants it to happen. [footnote 66] Employees found to have engaged in harassment are subject to disciplinary action, up to and including removal. [footnote 67]

However, we do not believe that Library policy and EEO/DP's standard operating procedures adequately describe what happens, and what component is responsible to respond, when employees report alleged harassment directly to EEO/DP, as opposed to management, and they do not file a dispute or complaint of harassment in a timely manner. EEO/DP is required to follow-up when an employee files a dispute or complaint according to Library policy, such as when they engage with the EEO complaint and ADR processes. Otherwise, one of the Library's unions told us it was unclear what EEO/DP would do. We learned from the Library's response to the January 2022 preliminary version of this report that management would conduct the inquiry regardless of whether employees alerted management or EEO/DP. EEO/DP refers cases reported directly to it to management for follow up. EEO/DP itself does not conduct the inquiry. EEO/DP's standard operating procedures do not state this and they should since this is a fundamental responsibility in the Library's anti-harassment process. [footnote 68]

#### Recommendation

We recommend the Library:

3) Document EEO/DP's role and responsibilities in its standard operating procedures when employees contact it directly about alleged harassment, including sexual harassment, but do not intend to file a dispute or complaint of harassment in a timely manner.

#### EEO/DP Should Strengthen How It Communicates the Library's Anti-Harassment Activities

When we provided the Library with a preliminary version of this report at the

end of January 2022, the Library also took immediate steps to address issues we raised pertaining to how it communicates the Library's anti-harassment activities via its EEO poster and EEO/DP intranet website. See Appendix B for a summary description of the issues we identified and the actions taken by the Library in response. We report below on the outstanding issues we identified during the audit that pertain to the Library providing more clear and accurate information to Library employees about the anti-harassment, EEO complaint, and ADR processes, particularly for the benefit of employees unfamiliar with these processes. GAO's internal control guidance states that management should communicate quality information to employees to achieve objectives, such as the Library's objective to prevent and address discriminatory harassment.[footnote 69] With a better understanding of the processes, Library employees may engage with them more readily.

#### Unclear and Inaccurate Communication About the Anti-Harassment Process Poses Risk

We identified risks associated with EEO/DP not effectively communicating the Library's anti-harassment process to employees. A large proportion of our survey respondents (94 percent) indicated they knew the Library had an anti-harassment policy, which was a positive result.[footnote 70] However, fewer respondents indicated they knew their rights and responsibilities related to sexual harassment (80 percent)[footnote 71] and even fewer indicated they knew how to report sexual harassment (71 percent).[footnote 72]

Further, as described in Table 4, among the 100 survey respondents who indicated they had experienced alleged sexual harassment or related unwelcome behavior, respondents attributed not contacting EEO/DP about their experience to lacking a basic familiarity with EEO/DP, demonstrating the risk of EEO/DP not effectively communicating its anti-harassment role.[footnote 73]

Table 4: Survey Respondents Indicated They Lacked a Basic Familiarity with EEO/DP

"At the time, I didn't know I could contact EEP/DP [sic]."

"I did not know about EEO/DP"

"How?"

"I didn't know the EEO/DP existed"

"I didn't know that was an option and I wasn't sure what to do"

Table 4: Survey Respondents Indicated They Lacked a Basic Familiarity with EEO/DP

Source: OIG's April 2021 Library Employee Survey of Sexual Harassment or Other Related Unwelcome Behavior

#### EEO/DP's Anti-Harassment Training Has Been Effective, but More Training Is Needed

Our survey respondents deemed the Library's sexual harassment prevention training more effective in informing them about their rights and responsibilities and how to report sexual harassment than the EEO poster and EEO/DP's intranet website. However, the proportion of respondents who had taken sexual harassment prevention training in roughly the two years leading up to our April 2021 survey was at a moderate level (61 percent).[footnote 74] EEOC recommends for the federal agencies and EEO offices under its purview that all employees receive anti-harassment training regularly.[footnote 75] This is in line with one of the requirements of the No FEAR Act for executive branch agencies to instruct employees every two years on the rights and remedies available to them under antidiscrimination laws.[footnote 76]

Further, as shown in Table 5, our survey respondents indicated the Library should require annual sexual harassment prevention training.[footnote 77] Whether annual or biennial, this training would help employees develop competence in preventing and addressing discriminatory harassment and reinforce that sexual harassment will not be tolerated at the Library.[footnote 78]

Table 5: Survey Respondents Recognized the Need for More Sexual Harassment Prevention Training

“The Library should require annual training on the anti-harassment policy, including how to identify, report and address harassment...”

“I have worked at the Library for more than 12 years and have had minimal antiharassment [sic] (including sexual harassment) training...”

“I have worked at the LOC for nearly 15 years, and I have received a couple of sexual harrassment [sic] trainings during my tenure. I believe they should be mandatory and conducted annually...”

“I think if we have to do records training annually we should have to do sexual harassment training annually also...”

“Anti-harassment training should be mandatory for all employees on an annual basis, similar to IT security training.”

Table 5: Survey Respondents Recognized the Need for More Sexual Harassment Prevention Training  
Source: OIG’s April 2021 Library Employee Survey of Sexual Harassment or Other Related Unwelcome Behavior

Our survey respondents informed us that they were particularly concerned about retaliation, an area that EEO/DP could address in anti-discrimination training provided to all employees on a more regular basis. We asked the 100 survey respondents who indicated they experienced alleged sexual harassment (or related unwelcome behavior) about retaliation and learned that 16 respondents felt they experienced professional retaliation (e.g., denied promotion/training) when they reported their experience.[footnote 79] We also learned that 18 respondents felt they experienced social retaliation (e.g., ignored by coworkers) when they reported their experience. Among the same 100 respondents, we also identified a real or perceived fear of retaliation as a reason why they did not report alleged harassment, as shown in Table 6.[footnote 80] Library policy prohibits retaliation against employees who report harassment. Individuals found to have engaged in retaliation are subject to disciplinary action, up to and including removal.[footnotes 81,82]

Table 6: Employees Reported Fear of Retaliation as a Reason for Not Reporting Allegations of Harassment

“... did not want to risk retaliation or being labeled a troublemaker”

“... I did not feel I would be protected from retaliation...”

“I have reported negative actions in the past and suffered negative retaliation.”

“I didn't expect anything to be done, or if something was done, I expected retaliation from my supervisor”

“I was afraid of the back lash [sic] from my office management. nothing is taking [sic] seriously...”

Table 6: Employees Reported Fear of Retaliation as a Reason for Not Reporting Allegations of Harassment

Source: OIG’s April 2021 Library Employee Survey of Sexual Harassment or Other Related Unwelcome

## Behavior

### Recommendation

We recommend the Library:

4) Implement mandatory sexual harassment prevention training, or broader training on employment discrimination that addresses sexual harassment regularly, such as annually or biennially, for all Library employees.

#### The Library Should Ensure that Library Policy Governing the Library's EEO Program is Up-to-Date

EEO/DP should work with the Office of the General Counsel (OGC) to ensure that the Library communicates accurate information to employees about the anti-harassment, EEO complaint, and ADR processes by keeping the content of Library policy posted on the Library's intranet up-to-date.[footnote 83] Otherwise, Library employees are at greater risk of misunderstanding the processes and not knowing their rights and responsibilities. For example, we observed that Library policy for the anti-harassment process referenced the Dispute Resolution Center,[footnote 84] an organizational component that no longer exists.[footnote 85] A policy for the ADR process also referred to "the convener" and the Director of the Office of Opportunity, Inclusiveness, and Compliance (OIC)[footnote 86] while neither of these designations are in use any longer. The Library replaced the Director position with the EEO/DP Chief position and replaced OIC with EEO/DP. Further, LCR 11-321, Grievances, did not reference the ADR process. According to OGC, it intends to update LCR 11-321 to reflect that ADR is available to non-bargaining unit employees filing a grievance.

### Recommendations

We recommend the Library:

5) Update the out-of-date information in EEO policies (i.e., the appropriate regulations and directive) for the anti-harassment, EEO complaint, and ADR processes.

6) Establish a system to update EEO policies for the anti-harassment, EEO complaint, and ADR processes as soon as possible when changes are made.

#### EEO/DP Needs to Establish Procedures to Improve Its Information Sharing with Participants in the EEO Complaint Process

EEO/DP should design procedures to improve its information sharing with complainants during the EEO complaint process.[footnote 87] Otherwise, complainants are at a greater risk of misunderstanding the EEO complaint process and not knowing their rights and responsibilities. For each of the activities discussed below, based on GAO's internal control guidance, EEO/DP should design a procedure to implement the activity and document it in EEO/DP's standard operating procedures for the benefit of EEO/DP staff.[footnote 88]

#### Sharing Written Materials Concerning the EEO Complaint Process

Neither Library policy nor EEO/DP's standard operating procedures require EEO/DP Counselors to provide employees or qualified, outside job applicants with written materials concerning their rights and responsibilities and the operation of the EEO complaint process as part of intake procedures, which EEOC identifies as an element of a model EEO program.[footnote 89] For example, it could communicate more clear and accurate information about the process in the form of a hardcopy flowchart.

### Recommendation

We recommend the Library:

7) Implement a procedure requiring EEO/DP Counselors to provide written materials about the EEO complaint process and aggrieved individuals' rights and responsibilities during initial counseling. EEO/DP should document the procedure in its standard operating procedures.

Providing an Acknowledgement Letter upon Receipt of a Formal Complaint

Neither Library policy nor EEO/DP's standard operating procedures require EEO/DP to provide an acknowledgment letter upon receipt of a formal complaint of discrimination, which EEOC identifies as another element of a model EEO program.[footnote 90]

Recommendation

We recommend the Library:

8) Implement a procedure in which EEO/DP provides acknowledgment upon receipt of formal complaints of discrimination. EEO/DP should document the procedure in its standard operating procedures.

Notifying Complainants of Untimely Investigations

Neither Library policy nor EEO/DP's standard operating procedures require EEO/DP to notify the complainant in writing if the investigation into their complaint is not timely.[footnote 91] EEOC directs federal agencies and EEO offices under its purview to do so. EEOC requires that the written notification include the date by which the agency will complete the investigation and information about the complainant's rights.[footnote 92] We received a complaint in 2018 alleging that EEO/DP was taking up to six months to complete investigations. We received another complaint in 2021 about an untimely investigation and determined through a review of documentary evidence, as discussed later in this report, that the primary source of the problem was a delay in the initiation of the investigation, not that the investigation itself went on too long. Better communication from EEO/DP to complainants may mitigate concerns about delayed investigations, including written notification of a delay in the initiation of an investigation.

Recommendation

We recommend the Library:

9) Implement a procedure to notify aggrieved individuals in writing if the complaint investigation will not be timely. The notification should include the estimated date by which EEO/DP will complete the investigation and the aggrieved individuals' rights. EEO/DP should document the procedure in its standard operating procedures.

The Library and EEO/DP Should Strengthen Their Management of the EEO Program

We identified three deficiencies associated with EEO/DP's implementation of the EEO complaint process and the Library's EEO program generally that pose a risk of noncompliance with the Library's regulatory requirements. According to GAO's internal control guidance, management should remediate identified internal control deficiencies on a timely basis.[footnote 93] EEO/DP was not completing the Counselor's report per regulatory requirements;

tracking and reporting on the timeliness of the EEO complaint process to demonstrate regulatory compliance; and

maintaining a sufficient quality control program to help ensure compliance with regulatory and EEO/DP procedural requirements.

When we provided the Library with a preliminary version of this report at the end of January 2022, the Library alerted us that it had created new standard operating procedures for the EEO/DP Counselor's inquiry and report. Appendix B provides a summary description of the reasons why EEO/DP needed the procedures.

We also identified other vulnerabilities for the Library and EEO/DP to address. They include

posting an EEO policy statement on the Library's internet homepage;

developing procedures to manage EEO complaint cases that involve influential Library officials;

addressing EEO/DP staff performing multiple roles in the same EEO complaint;

documenting requirements for EEO/DP staff to maintain their competence through ongoing professional training; and

revising EEO/DP's EEO complaint process flowchart to communicate more complete information on when Library employees can file a claim with the Office of Congressional Workplace Rights.

Complete the EEO/DP Counselor's Report per Regulatory Requirements

According to LCR 11-311, Resolving Complaints of Discrimination at the Library, when advised by the EEO/DP Chief that a formal complaint of discrimination has been filed, the Counselor submits a written report to the Chief, with a copy of the same to the complainant, summarizing the counseling process.[footnote 94] However, the EEO/DP Chief informed us in an interview that EEO/DP Counselors had not been completing the written report for "the last few years." The Chief stated that Counselors had been providing oral reports. Hence, we concluded that this represented an instance of regulatory noncompliance.

We attribute the noncompliance in part to the Library not setting performance expectations holding the EEO/DP Chief accountable for enforcing compliance with the requirements of EEO/DP outlined in the regulations and directive for the anti-harassment, EEO complaint, and ADR processes, which we determined based on a review of the EEO/DP Chief's 2021 performance plan. According to GAO's internal control guidance, management should evaluate performance and hold individuals accountable for their internal control responsibilities.[footnote 95] We also attribute the noncompliance in part to EEO/DP not having a sufficiently robust quality control program, which we discuss later.

Recommendation

We recommend the Library:

10) Incorporate a performance expectation into the EEO/DP Chief's performance plan that the Chief will enforce compliance with the requirements of EEO/DP outlined in the regulations and directive for the anti-harassment, EEO complaint, and ADR processes.

Track and Report on the Timeliness of the EEO Complaint Process to Demonstrate Regulatory Compliance

EEO/DP should have controls in place to systematically monitor and report on the timeliness of the EEO complaint process, which was not the case. Library policy is to “provide fair, impartial and expeditious counseling and investigation as part of the EEO Program, which shall ensure access by all staff and qualified applicants for employment and shall attempt to provide prompt resolution to issues, complaints, or charges of discrimination...”[footnote 96] (emphasis added). Library policy also specifically identifies certain timelines, such as the 15-workday timeline for the Counselor’s inquiry [footnote 97] and the 60-workday timeline for the Investigator’s investigation.[footnote 98] Accordingly, EEO/DP should have controls in place to monitor and report on the timeliness of such activities, and others as appropriate.

EEO/DP has a spreadsheet it uses to document activities per complaint, but we determined that it did not track either the 15- or 60-workday timelines for the Counselor’s inquiry and Investigator’s review, respectively, preventing EEO/DP from being able to systematically report on timeliness, such as to the Chief of Staff or in its annual report. GAO’s internal control guidance advises management to make ongoing monitoring built into operations and performed continually using baselines (e.g., the 15- and 60-workday timelines).[footnote 99] EEO/DP should start tracking these activities, and others as appropriate; it could, for example, make modifications to its current spreadsheet to begin computing the average amount of time per activity across the complaints it manages.

Before it starts to track timeliness though, EEO/DP needs to determine how it will measure timeliness. EEO/DP has not defined when EEO complaint activities officially start and end for measurement purposes in its standard operating procedures. In interviews, EEO/DP staff gave us inconsistent information with regard to when the initial 45-calendar day deadline for submitting an informal complaint ends, when the Counselor’s inquiry starts, and when the Investigator’s review ends. For example, LCR 11-311, Resolving Complaints of Discrimination at the Library, does not state how to measure whether an aggrieved individual has met the end of the 45-calendar day deadline after the date of an alleged discriminatory event in order to proceed with the EEO complaint process.[footnote 100] In separate interviews with EEO/DP staff, we were told that the period ended (1) when the aggrieved contacted EEO/DP and (2) when EEO/DP received a signed form completed by the aggrieved reporting the alleged discriminatory action. The first approach to measuring compliance would be more advantageous to the aggrieved and reduce the risk of them missing the deadline.

Further, we have received complaints about the timeliness of EEO/DP’s investigations, which should be completed within 60 workdays, unless an extension has been granted.[footnote 101] For example, in 2021, a Library employee informed us about the untimely investigation they experienced. Through a review of documentary evidence, we determined that it took approximately seven months after EEO/DP accepted the complaint for EEO/DP to start the investigation. The investigation itself was completed in about two months.[footnote 102] This means that tracking the amount of time taken to complete the investigation itself would not have generated data about the timeliness of the investigation generally. Based on GAO’s internal control guidance, EEO/DP should define how it measures timeliness in its standard operating procedures.[footnote 103] EEOC directs the federal agencies and EEO offices under its purview to assess the timeliness of investigations on an annual basis.[footnote 104]

Additionally, Library policy does not provide a timeframe for the Library to issue a final agency decision (FAD) with or without a hearing after the EEO/DP Chief notifies all parties of their decision on whether discrimination occurred.[footnote 105] The Library cannot be held accountable for the timely processing of complaints at the FAD stage absent a specified timeframe. In contrast, EEOC has timeframes. EEOC designates a 60-day timeframe for a FAD after a complainant requests an immediate decision from the agency.[footnote 106] If the complainant requests a hearing, EEOC requires an administrative judge to issue a decision on the complaint within 180 days of receiving the

complaint file from the agency.[footnote 107] Establishing such timeframes would be in line with Library policy to “attempt to provide prompt resolution to issues, complaints, or charges of discrimination...”[footnote 108] (emphasis added).

#### Recommendations

We recommend the Library:

11) Document in EEO/DP’s standard operating procedures how it will measure the official start and end times for EEO complaint process activities (e.g., when the initial 45-calendar day deadline for submitting an informal complaint ends, when the Counselor’s inquiry starts, and when the Investigator’s review ends).

12) Modify the EEO/DP tracking spreadsheet to track the timeliness of EEO/DP’s EEO complaint activities and the EEO complaint process generally using the start and end times documented in EEO/DP’s standard operating procedures.

13) Require EEO/DP to report on the timeliness of its EEO complaint activities, and the EEO complaint process generally, to the Chief of Staff and in its annual report.

14) Establish timeframes in Library policy for the Librarian to issue a FAD with or without a hearing.

#### Develop and Maintain a Sufficient Quality Control Program

EEO/DP should establish and operate more effective monitoring activities to identify operational issues that need to be remediated, such as its noncompliance with regulatory requirements, based on GAO’s internal control guidance.108F109 EEO/DP should also document such activities in its standard operating procedures. As stated earlier, we attribute EEO/DP not submitting written Counselor reports per regulatory requirement in part to EEO/DP not having a sufficiently robust quality control program.

EEO/DP’s standard operating procedures state the following with regard to maintaining quality: “At the end of each fiscal year all case files closed during the previous year will be audited to ensure that no documentation was omitted. Paper files and electronic files will be compared to ensure both match exactly.” However, we determined in an interview that by May 2021, EEO/DP had yet to conduct this quality control exercise. This was approximately seven months after the close of the fiscal year ending September 30, 2020. In interviews with EEO/DP staff, we also learned that they considered EEO/DP’s weekly case meetings, the tracking spreadsheet, quarterly reports submitted to the Chief of Staff, and annual reports to be part of EEO/DP’s quality control program, although these elements were not documented as such in EEO/DP’s standard operating procedures.[footnote 110]

We also concluded that EEO/DP was at greater risk of noncompliance because its quality control program did not include an annual self-assessment that incorporated a review of its legal and regulatory compliance. EEOC directs the federal agencies and EEO offices under its purview to conduct an annual self-assessment under Management Directive (MD) 715.[footnote 111] The Librarian by statute, and not EEOC, acts as the enforcement authority for employment EEO-related complaints and disputes involving the Library and therefore does not need to comply with EEOC guidance. Nevertheless, in December 2021, the Library informed us that it had voluntarily started to utilize EEOC’s MD-715 guidance with regard to conducting barrier analysis, suggesting that the Library would be willing to adopt other practices outlined in MD-715.[footnote 112] In addition to barrier analysis, MD-715 requires the federal agencies and EEO offices under EEOC’s purview to conduct an annual self-assessment. EEOC has developed a series of questions designed to provide federal agencies with an effective means to conduct the assessment.

According to EEOC, the assessment permits EEO Directors to recognize, and to highlight for senior staff, deficiencies in their EEO programs.[footnote 113]

The Chief of Staff exercises the first line of oversight for EEO/DP because the office reports to them. Therefore, based on GAO's internal control guidance, the Chief of Staff is responsible for overseeing EEO/DP management's design, implementation, and operation of its internal control system. These responsibilities include, among other things, overseeing the potential impact of EEO/DP management overriding internal controls (e.g., not submitting written Counselor reports per regulatory requirement). They also include scrutinizing EEO/DP's evaluation and remediation of identified deficiencies.[footnote 114]

Consequently, the Chief of Staff should ensure that EEO/DP management conducts appropriate annual self-assessments and determine the necessity of a qualified outside entity conducting periodic assessments of EEO/DP's compliance with Library EEO-related regulations and directives as appropriate and with EEO/DP's own standard operating procedures. EEOC assesses the EEO offices under its purview for compliance with EEOC's MD-715 guidance.[footnote 115] A similar program at the Library would further reduce the risk of regulatory noncompliance. [footnote 116]

#### Recommendations

We recommend the Library:

15) Develop a more rigorous EEO/DP quality control program, thoroughly document the program in EEO/DP's standard operating procedures, and initiate the program in full.

16) Require EEO/DP to complete an annual self-assessment of its operations that includes evaluating compliance with Library EEO-related regulations and directives as appropriate and submit the assessment to the Chief of Staff for review. EEO/DP should document these activities in its standard operating procedures.

17) Require the Chief of Staff to determine the necessity of a qualified outside entity conducting periodic assessments of EEO/DP's compliance with the Library EEO-related regulations and directives as appropriate as well as with EEO/DP's own standard operating procedures.

#### Other Vulnerabilities for EEO/DP to Address

We identified steps for EEO/DP to take to address other vulnerabilities, as outlined below.

##### Posting an Equal Employment Opportunity Policy Statement on the Library's Internet Website

One of the ways the Library demonstrates its commitment to anti-discrimination is by making relevant electronic materials available on its intranet, such as those accessible via EEO/DP's intranet website for the benefit of employees.[footnote 117] The Library does not make such an effort for outside job applicants via its internet website.[footnotes 118, 119] Table 7 below provides examples of equal opportunity employer statements, or of statements that serve a similar purpose, made by select legislative branch government agencies and the Smithsonian Institution. The statements help job applicants better understand their rights and inform them of the agencies' commitment to anti-discrimination. All the statements were accessible through each agency's internet homepage.

Table 7: Statements in Support of Equal Employment Opportunity Made by Select Legislative Branch Agencies and the Smithsonian Institution on Their Internet Websites

“The Architect of the Capitol is an equal opportunity employer and prohibits discrimination in employment on the basis of ...” Architect of the Capitol, <https://www.aoc.gov/about-us/work-with-us/careers>, accessed on February 27, 2022.

“CBO is an equal opportunity employer committed to diversity...” Congressional Budget Office, <https://www.cbo.gov/about/careers>, accessed on February 27, 2022.

“A federal agency cannot discriminate against an employee or applicant ... on the basis of ...” Government Accountability Office, <https://www.gao.gov/no-fear-act-data>, accessed on February 27, 2022.

“Equity, diversity, and inclusion are essential to law enforcement operations and effectiveness...” United States Capitol Police, <https://www.uscp.gov/careers/diversity>, accessed on February 27, 2022.

The Office’s mission is three-fold to: 1) promote diversity and inclusion in all aspects of the Smithsonian’s workforce, programs and activities;... The Smithsonian Institution, Office of Equal Employment and Supplier Diversity, <https://www.si.edu/oeema>, accessed on February 27, 2022.

Table 7: Statements in Support of Equal Employment Opportunity Made by Select Legislative Branch Agencies and the Smithsonian Institution on Their Internet Websites  
Source: Agency websites as shown in the table.

Recommendation

We recommend the Library:

18) Post an equal opportunity employer statement, or similar statement, accessible through the Library’s internet homepage that expresses a commitment to anti-discrimination.

Managing EEO Complaint Cases That Involve Influential Library Officials

The Library should design procedures to handle cases involving influential Library officials and document them in its standard operating procedures. Library policy commits the Library to providing a fair and impartial EEO complaint process.[footnote 120] However, neither Library policy nor EEO/DP’s standard operating procedures provide guidance on handling “conflict cases” involving influential Library officials that could pose a conflict of interest because of the official’s authority. Not having documented procedures to address the real or perceived conflict of interest posed by such cases could make it more difficult for EEO/DP to fulfill its responsibility of administering a fair and impartial EEO complaint process.

As stated by EEOC, conflicts of interest, real or perceived, can arise when the responsible management official alleged to have engaged in discriminatory conduct works within the EEO office or has undue influence over agency personnel, such as when the alleged official is the head of the agency, an immediate staff member of the agency head, or someone who occupies a high-level position of influence at the agency.[footnote 121] Accordingly, EEOC identifies as a best practice creating a written policy and standard operating procedures that clearly define what constitutes a conflict case and how the agency will manage them, such as identifying the employees who will be involved in the processing of conflict cases.[footnote 122] Based on GAO’s internal control guidance, EEO/DP should design control activities to achieve objectives (e.g., provide a fair and impartial EEO complaint process) and respond to risks; it should also document the activity as a procedure in its standard operating procedures for

the benefit of EEO/DP staff.[footnote 123]

#### Recommendation

We recommend the Library:

19) Design and implement procedures to address the real or perceived conflict of interest posed by EEO complaint cases involving influential Library officials. EEO/DP should document the procedures in its standard operating procedures.

#### Addressing EEO/DP Staff Performing Multiple Roles in the Same EEO Complaint

EEO/DP should mitigate the risks associated with EEO/DP staff performing multiple roles for the same EEO complaint. We determined through interviews that EEO/DP staff may serve in the roles of Counselor and Investigator in the same complaint. Additionally, we determined that Counselors and Investigators may serve as neutrals facilitating ADR in the same complaint. Library policy commits the Library to providing a fair and impartial process,[footnote 124] but neither Library policy nor EEO/DP's standard operating procedures provide guidance regarding the practice of staff performing multiple roles in the same complaint.

EEOC directs federal agencies and EEO offices under its purview not to combine roles. The Counselor gathers basic information from the aggrieved individual, provides an environment for open dialogue, and attempts to find resolution informally prior to the complainant filing a formal complaint.

According to EEOC, a Counselor "may not serve as an investigator in a dispute in which s/he provided counseling to the aggrieved person"[footnote 125] (emphasis added) because this would compromise their Counselor role.[footnote 126] The Investigator is "a neutral fact finder who formally collects and discovers factual information concerning the claim(s) in the complaint under investigations and prepares an investigative summary." [footnote 127] As stated by EEOC, combining the roles of Counselor and Investigator can create a perception of bias and potentially confuse individuals about the purpose of the counseling process.

EEOC guidance also states, "If EEO Counselors and investigators are used as neutrals [for ADR], the agency must ensure that they do not serve as a neutral in the same dispute in which they provided counseling or conducted an investigation"[footnote 128] (emphasis added) unless they meet minimum training requirements. EEOC explains that having Counselors and Investigators switch roles between performing their traditional EEO duties and providing ADR can be confusing to aggrieved persons and to EEO staff as to their role in a particular case.

Not having staff switch between the Counselor, Investigator, and ADR neutral roles could be difficult given EEO/DP's limited personnel. Based on GAO's internal control guidance, where segregation of duties is not practical within an operational process because of limited personnel or other factors, EEO/DP should design alternative control activities.[footnote 129] Accordingly, EEO/DP should mitigate the risk of EEO staff not maintaining neutrality when performing multiple roles in the same complaint by establishing standards of conduct in its procedures that communicate expectations to EEO staff concerning integrity and ethical values associated with preserving neutrality.[footnote 130] EEO/DP's standard operating procedures do not provide such guidance. GAO's internal control guidance states that management should communicate expectations concerning integrity and ethical values.[footnote 131]

#### Recommendation

We recommend the Library:

20) Establish standards of conduct that communicate expectations to EEO/DP staff concerning integrity and ethical values associated with preserving neutrality when they must serve in multiple roles in the same EEO complaint (e.g., Counselor, Investigator, and ADR neutral). EEO/DP should document the guidance in its standard operating procedures.

#### Documenting Requirements for EEO/DP Staff to Maintain Their Competence Through Ongoing Professional Training

EEO/DP staff take training, but EEO/DP's standard operating procedures do not include training requirements. In contrast, EEOC directs the federal agencies and EEO offices under its purview to ensure that new Counselors have a minimum of 32 hours of Counselor training prior to assuming counseling duties and receive at least eight hours of continuing EEO Counselor training each fiscal year.[footnote 132] EEOC requires all new Investigators to complete at least 32 hours of investigator training before conducting investigations and receive at least eight hours of continuing investigator training every fiscal year.[footnote 133] EEOC requires any person serving as a neutral in an agency's ADR program to have professional training in whatever dispute resolution technique(s) the agency utilizes in its program.<sup>133F134</sup> GAO's internal control guidance notes that training enables individuals to develop competencies appropriate for their key roles.[footnote 135] EEO/DP should demonstrate a commitment to developing and retaining competent staff by establishing training expectations in its standard operating procedures. Otherwise, EEO/DP is at greater risk of having underqualified staff.

#### Recommendation

We recommend the Library:

21) Establish training requirements for EEO/DP staff as appropriate for their key roles. EEO/DP should document the requirements in its standard operating procedures.

#### Communicating When Library Employees Can File a Claim with the Office of Congressional Workplace Rights

We reviewed EEO/DP's EEO complaint process flowchart and concluded that it did not provide complete information on the availability of the option to file a complaint with OCWR. Library employees or qualified, outside job applicants may file a complaint of discrimination with the Library or OCWR. This arrangement has certain stipulations. Nevertheless, according to LCR 11-310, Election of Remedies for EEO Complaints of Discrimination, if an employee or job applicant files a complaint through the Library, they may file the complaint with OCWR any time prior to either requesting an evidentiary hearing with a FAD from the Librarian or requesting a FAD from the Librarian without a hearing. [footnote 136]

This result became apparent when we conducted a side-by-side comparison of the OCWR and EEO/DP flowcharts for the Library's EEO complaint process as shown in Figure 1 below. The excerpt from OCWR's flowchart for the Library's EEO complaint process shown on the left illustrates that the option to file with OCWR is available at multiple stages up to requesting a FAD, with or without a hearing. We inserted a red oval into the figure to highlight the multiple opportunities. The excerpt from EEO/DP's flowchart shown on the right suggests that the option to file with OCWR is available only at the start of the process. We inserted red arrows into the EEO/DP flowchart to indicate the other stages in which the opportunity to file with OCWR is also available. Not providing complete information on the availability of the option to file a complaint of discrimination with OCWR puts the aggrieved at greater risk of not knowing their rights and responsibilities.[footnote 137]

Figure 1: Side-By-Side Comparison of Excerpts from the OCWR and EEO/DP Flowcharts Showing the Library's EEO Complaint Process

Column One

Library of Congress with an arrow to

ADR/ INFORMAL COUNSELING Library of Congress Regulation (LCR) 11-360 (or relevant collective bargaining agreement)

ADR/ INFORMAL COUNSELING Library of Congress Regulation (LCR) 11-360 (or relevant collective bargaining agreement) with an arrow to FORMAL COMPLAINT LCR 11-310 section 6 or may transfer to OCWR

FORMAL COMPLAINT LCR 11-310 section 6 with an arrow to INVESTIGATION LCR 11-310 section 9 or may transfer to OCWR

INVESTIGATION LCR 11-310 section 9 with an arrow to DECISION BY EQUAL EMPLOYMENT OPPORTUNITY AND DIVERSITY PROGRAM CHIEF LCR 11-310 section 10 or may transfer to OCWR

DECISION BY EQUAL EMPLOYMENT OPPORTUNITY AND DIVERSITY PROGRAM CHIEF LCR 11-310 section 10 with an arrow to REQUEST FOR HEARING

Alterante Dispute Resolution (ADR)

Employees may use the Library's ADR process to resolve issues informally at any stage in the process.

Column Two

Alleged Discriminatory Event - Must contact EEODP and consult with counselor within 45 calendar days arrow to Informal Counseling 15 workdays or may file with the Office of Congressional Workplace Rights

Informal Counseling 15 workday arrow to Notice of Final Interview and Right to File a Formal Complaint (NFI) or may file with the Office of Congressional Workplace Rights

Notice of Final Interview and Right to File a Formal Complaint (NFI) arrow to Formal Complaint Must be received within 10 workdays from date of NFI or may file with the Office of Congressional Workplace Rights

Formal Complaint Must be received within 10 workdays from date of NFI arrow to Complaint accepted by Chief Assigned to investigator within 10 workdays or may file with the Office of Congressional Workplace Rights

Complaint accepted by Chief Assigned to investigator within 10 workdays arrow to Investigation - Investigator submits Report of Investigation within 60 workdays or may file with the Office of Congressional Workplace Rights

Investigation - Investigator submits Report of Investigation within 60 workdays arrow to

Decision - Chief Issues decision within 15 workdays or May request Final Agency Decision with or without hearing.

Figure 1: Side-By-Side Comparison of Excerpts from the OCWR and EEO/DP Flowcharts Showing the Library's EEO Complaint Process

Sources for the Excerpt of the OCWR Flowcharts: [left] [https://www.ocwr.gov/wp-content/uploads/2019/06/adr\\_charts\\_process\\_for\\_loc\\_employees\\_20190619.pdf](https://www.ocwr.gov/wp-content/uploads/2019/06/adr_charts_process_for_loc_employees_20190619.pdf) accessed on April 8, 2022;

[right] [https://staff.loc.gov/sites/eeodp/files/2021/12/EEO\\_Flowchart.pdf](https://staff.loc.gov/sites/eeodp/files/2021/12/EEO_Flowchart.pdf) accessed on April 7, 2022

Recommendation

We recommend the Library:

22) Revise EEO/DP's EEO complaint process flowchart to incorporate more complete information on the availability of the option to file a complaint of discrimination with OCWR.

#### EEO/DP Should Establish Its Strategic Mission

We determined that EEO/DP has not established an overall mission statement and it should in order to demonstrate its strategic alignment with the Library.[footnote 138] A fundamental principle of strategic planning is alignment. As stated by GAO, leading organizations recognize that an organization's activities, core processes, and resources must align to support its mission and help it achieve goals.[footnote 139]The Library has demonstrated that it recognizes the need to define mission at lower levels as part of achieving organization-wide alignment. LCD 1-610.1, Directional Plans, requires service units, and sub-units as directed, to define their missions and other strategic activities in support of the Library's strategic plan entitled Enriching the Library Experience.[footnote 140] Because EEO/DP is not a service unit, it did not develop a directional plan and the Library has not directed it to do so. EEO/DP is a sub-unit of the Office of the Librarian reporting to the Chief of Staff.

Nevertheless, EEO/DP should define its overall mission in alignment with the Library's mission. We have stated previously that continued, persistent focus is needed to strengthen the Library's strategic planning and performance management activities. [footnote 141] Having EEO/DP answer the question "what is our mission?" would be a positive step forward. EEO/DP should then align whatever goals and performance measures it has in support of its stated mission to complete its alignment with the Library's strategic orientation.

In the development of EEO/DP's mission statement, and during contemplation about EEO/DP's purpose, the Library may want to consider the extent to which EEO/DP functions as a neutral entity to help assure the impartiality of the anti-harassment, EEO complaint, and ADR processes. Library policy is explicit on this topic with regard to the EEO complaint and ADR processes, but not for the anti-harassment process.

LCR 11-360, Alternative Dispute Resolution - Non-Bargaining Unit Employees, refers to the duties of the "neutral third party (convener),"141F142 a role performed by EEO/DP staff as part of ADR.

LCR 11-311, Resolving Complaints of Discrimination at the Library, states that the Library will provide "fair, impartial and expeditious counseling and investigation as part of the EEO Program"[footnote 143] and that EEO/DP "is authorized to make independent decisions regarding charges of discrimination within the purview of the regulation."[footnote 144]

However, LCD 9-120.1, Anti-Harassment and Retaliation Policy, is not entirely clear about whether EEO/DP functions in a neutral and/or impartial manner in relation to the anti-harassment process. LCD 9-120.1 states that the Library is committed to "a prompt and appropriate inquiry into, or investigation of, reports of harassment"[footnote 145] without making a direct reference to neutrality or impartiality, although we noted that EEO/DP's standard operating procedures do refer to EEO/DP generally serving a neutral role. [footnote 146]

EEO/DP has an opportunity to clarify its role in this regard by stating that it serves in a neutral and/or impartial manner in its mission statement, if that is appropriate.

#### Recommendation

We recommend the Library:

23) Direct EEO/DP to develop an overall mission statement and then align whatever goals and performance measures it has in support of its

stated mission.

## Conclusions

The Library is committed to preventing and addressing discriminatory harassment, but management was not aware of the extent to which employees had experienced or were concerned about alleged sexual harassment or other related unwelcome behavior.

The Library's anti-harassment policy contains many of the elements that model EEO programs possess. However, EEO/DP can improve the documentation of its role and responsibilities in its standard operating procedures. EEO/DP can also improve - particularly for the benefit of employees unfamiliar with the Library's anti-harassment, EEO complaint, and ADR processes - how it communicates information about the processes to employees.

The Library and EEO/DP need to establish stronger internal controls to mitigate the risk of EEO/DP not complying with regulatory requirements. The Library and EEO/DP also need to address other program vulnerabilities.

Additionally, EEO/DP has not defined its overall mission, which is necessary to demonstrate its strategic alignment with the Library, and then align whatever goals and performance measures it has in support of its stated mission.

## Appendix A: Objectives, Scope, and Methodology

Due to its concerns about sexual harassment in each of the legislative branch agencies, the United States Senate Committee on Rules and Administration asked us in December 2018 to review the handling of sexual harassment cases at the Library. In July 2019, we provided the committee with responsive information, which included information on allegations of sexual harassment at the Library over a 10-year period. In December 2020, we issued a nonpublic report that was also responsive to the Committee's request. As described in this report, we addressed an anonymous hotline complaint that alleged sexual harassment.[footnote 147] The purpose of this audit was to complete the review requested by the Committee.

The audit's objectives were to (1) evaluate policies, procedures, and strategic planning activities related to the Library's anti-harassment program, particularly as they related to preventing, eliminating, and punishing sexual harassment; (2) assess whether the Library's anti-harassment program adhered to best practices; and (3) examine relevant training practices.[footnote 148] All audit activities occurred in Washington, DC.

To answer our objectives, we reviewed applicable sections of laws, such as in Title VII of the Civil Rights Act of 1964, Library regulations and directives,[footnote 149] and EEO/DP's standard operating procedures. This was in part to identify applicable criteria for our analysis. As reported in the findings section, while analyzing for compliance, we identified an instance of regulatory noncompliance. [footnote 150]

We reviewed EEOC guidance to identify applicable best practices and assess whether EEO/DP's anti-harassment activities adhered to them as appropriate. [footnotes 151,152] We utilized several EEOC resources [footnote 153] and consulted with a Director of Federal Sector Programs within the Office of Federal Operations at EEOC.

We utilized GAO guidance, such as GAO's internal control guidance.[footnotes 154,155,156] We determined that each of GAO's five components of internal control were significant, as well as most of the principles of internal control. Table 8 below lists the components and principles we identified as relevant to this audit. We assessed the design, implementation, and/or operating effectiveness of internal controls as appropriate. The internal control

issues we identified are discussed in the report's findings section.

Table 8: The Components and Principles Significant to the Audit Objectives

The Control Environment

1. Demonstrate commitment to integrity and ethical values.
2. Exercise oversight responsibility.
3. Establish structure, responsibility, and authority.
4. Demonstrate commitment to competence.
5. Enforce accountability.

Risk Assessment

7. Identify, analyze, and respond to risks.

Control Activities

10. Design control activities.
11. Design activities for the information system.
12. Implement control activities.

Information and Communication

13. Use Quality Information.
14. Communicate internally.
15. Communicate externally.

Monitoring

16. Perform monitoring activities.

Table 8: The Components and Principles Significant to the Audit Objectives

Source: GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014.

We obtained and analyzed documentary and testimonial evidence from EEO/DP.[footnote 158] We reviewed other materials as well, including EEO/DP's intranet website, EEO poster, training materials, and the EEO/DP Chief's position description and performance plan. We also reviewed the Library's internet homepage and select information from our Investigations Division relevant to our audit objectives. [footnote 158] Additionally, we conducted research to better understand the topic of sexual harassment in the larger context of the federal government workplace. [footnote 159]

We conducted interviews, including with EEO/DP management officials, other EEO/DP staff, the Library's Senior Advisor for Organizational Performance, and representatives of two of the Library's collective bargaining units. We additionally posed written questions and received written responses from EEO/DP, OGC, and the Human Capital Directorate.

We also hired a qualified, independent subject matter expert (aka specialist) [footnote 160] and conducted an anonymous employee survey on sexual harassment to help ensure that our findings, conclusions, and recommendations were proper and complete. [footnote 161] The specialist helped OIG identify practices that constituted best practices and evaluate Library policy and EEO/DP's procedures against such practices. The specialist was not expected to be knowledgeable of government auditing standards, did not create audit workpapers, and did not write any portion of the report, although they did review the report to help ensure that there was a reasonable basis for the report's findings, conclusions, and recommendations based the evidence collected. The specialist also served as a resource during briefings with Library staff in December 2021 at the end of audit fieldwork to help answer their questions about our findings and conclusions.

As reported in the first finding, we conducted an anonymous employee survey on sexual harassment in April 2021. [footnotes 162, 163, 164] We concluded that the survey was necessary to determine whether the Library's policies, procedures, and strategic planning activities were responsive to addressing employees' experiences and concerns related to sexual harassment. The findings sections share data obtained from the survey and our analysis of it. Before presenting our survey results, we underscored the subjective nature of sexual harassment,

although as noted we tried to mitigate this by providing our survey participants with a definition of sexual harassment that aligned with the Library's definition provided in LCD 9-120.1, Anti-Harassment and Retaliation Policy. [footnote 165] We also noted that investigating allegations of sexual harassment involves looking at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis. [footnote 166]

Near the end of the audit, we identified discrepancies in the audit evidence. We shared a preliminary version of this report with the Library in January 2022. The Library's written comments on the report in some cases provided new evidence not previously shared and in a couple of cases reversed what we had learned from EEO/DP during our fieldwork. This occurred with regard to whether EEO/DP provided ADR services to qualified job applicants, a topic relevant to EEO/DP's compliance with Library regulations, and whether EEO/DP had a strategic plan. We inquired about these topics as part of completing the audit's objective to evaluate policies, procedures, and strategic planning activities related to the Library's anti-harassment program. Contrary to what EEO/DP had told us during our fieldwork, the Library stated that EEO/DP would not provide ADR to outside job applicants and that it did not have a strategic plan. We had to significantly change the last finding of this report upon learning from the Library's comments that the "strategic plan" EEO/DP provided to us during our fieldwork was not actually its strategic plan.

We initially conducted this performance audit from March 2020 to December 2021 in accordance with generally accepted government auditing standards. We then, as stated above, provided the preliminary version of this report to the Library in January 2022. When we received the Library's comments and identified the discrepancies referenced above, and learned from the comments that the Library had already taken steps to address several of our recommendations, we decided to conduct additional fieldwork, which occurred from February 2022 to April 2022. We took this action to help ensure that our findings, conclusions, and recommendations reflected the evaluation of sufficient, appropriate evidence.<sup>166F167</sup> We obtained and evaluated additional evidence to address the discrepancies and to incorporate information on the steps already taken. [footnote 168] We describe the steps taken in Appendix B: Actions Taken by the Library and EEO/DP in Response to a Preliminary Version of This Report. We conducted this additional fieldwork in accordance with generally accepted government auditing standards.

The generally accepted government auditing standards we used to guide all of our audit work require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

#### Appendix B: Actions Taken by the Library and EEO/DP in Response to a Preliminary Version of This Report

We have provided summary descriptions by report heading of the actions taken by the Library to address issues we outlined in a January 2022 preliminary version of our report.

##### EEO/DP Should Take Steps to Clarify Complex Library Policy

We identified unclear and inaccurate information in EEO/DP's flowchart of the EEO complaint process posted on its intranet website based on our review of Library policy. EEO/DP posted an updated flowchart that addressed the issues we identified. [footnote 169]

EEO/DP's ADR intranet webpage did not clearly explain that ADR

can provide resolution of an EEO dispute prior to an employee filing a complaint as part of the EEO complaint process. EEO/DP's current webpage for ADR does not make this entirely clear, [footnote 170] but its webpage for the EEO complaint process is now much clearer about the availability of ADR as a means to settle disputes prior to filing a complaint if this option is of interest to employees. [footnote 171]

#### EEO/DP Should Strengthen How It Communicates the Library's Anti-Harassment Activities

The Library's EEO Poster did not directly communicate that the Library prohibits discriminatory harassment. EEO/DP revised the EEO poster to address this issue and it was distributed.

EEO/DP's intranet webpage for the EEO complaint process did not clearly explain the interaction between the EEO complaint and ADR processes. EEO/DP revised the webpage to provide clearer information. [footnote 172]

EEO/DP's intranet webpage for the ADR process did not provide complete information about the different types of ADR available to employees. EEO/DP revised the webpage to provide clearer information. [footnote 173]

#### The Library and EEO/DP Should Strengthen Management of the EEO Program

EEO/DP had not defined the activities associated with performing the Counselor's inquiry and subsequently completing the Counselor's report. According to Library policy for the EEO complaint process, the EEO/DP Counselor conducts an inquiry after initial counseling. [footnote 174] Library policy states, "The Counselor shall make whatever inquiry into the matter he/she considers necessary, with the aim of assisting the complainant and management in defining and understanding the problem or charge." [footnote 175] Further, "When advised by the Chief that a formal complaint of discrimination has been filed, the Counselor shall submit a written report to the Chief, with a copy of the same to the complainant, summarizing the counseling process he/she gave the complainant and management officials." [footnote 176] EEO/DP created the procedures that provide the guidance EEO/DP staff need to complete the Counselor's inquiry as required by Library policy.

#### Appendix C: Management Response

Library  
Library of Congress  
Office of the Librarian

Date: June 17, 2022

To: Kim Byrd, Inspector General

From: J. Mark Sweeney, Principle Deputy Librarian of Congress

Subject: Management Response to OIG report 2020-PA-102, The Library's Anti Harassment Policy Has Many Strengths, Although Steps are Needed to Improve Policy Implementation

We appreciate the Office of the Inspector General's (OIG) evaluation of the Library of Congress' Equal Employment Opportunity and Diversity Program (EEODP), specifically the focus on Library policies on anti-harassment. The Library agrees that transparent policies as well as clear guidelines for the agency officials to execute those policies are fundamental to achieve efficient and effective EEO operations. Given the Library's unique situation in the legislative branch, employees have the benefit of

selecting among multiple avenues to pursue allegations and claims of discrimination, such as mediation, filing informally or formally with the Library's EODP Office, filing with the Office of Congressional Workplace Rights (OCWR), and ultimately pursuing action in federal court. To ensure the constitutional separation of powers, the Librarian has authority to oversee the Library's programs and establish rules. The resulting regulations, which have been negotiated with the Library's bargaining units, seek to document the policies underlying each avenue of redress and the steps for employees to pursue allegations.

The Library is committed to diversity and inclusion and explicitly assures employees that management will protect the confidentiality of individuals bringing harassment claims to the greatest extent possible, which also is consistent with the Equal Employment Opportunity Commission best practices used in the executive branch. We appreciate the OIG's findings that the Library's anti-harassment policy contains many of the elements that model EEO programs possess and has demonstrated a commitment to create and maintain a culture of intolerance for harassment. We also acknowledge that clearer and greater communication about the Library's anti-harassment policy will improve awareness and perceptions of the value of reporting allegations.

Due to the scope of the OIG's anonymous survey (such as excluding OCWR data) and inconsistencies among survey responses, the Library cannot come to the same conclusion as the report has about the extent to which employees have experienced or were concerned about alleged sexual harassment or other related unwelcome behavior. Nevertheless, Library management recognizes that a safe and secure workplace and diverse workforce is critical to execution of the Library's mission. The Library will continue to facilitate an environment where all employees not only know their rights, but feel assured the Library will undertake equitable and timely action in investigating employee complaints and prompt inquiries into reports of harassment.

cc:  
Ryan Ramsey, Chief of Staff  
Vicki Magnus, Chief, Equal Employment Opportunity and Diversity Program  
Elizabeth Pugh, General Counsel

The attached chart provides responses to the individual recommendations.

#### Attachment

Management Comments on Draft OIG Report No. 2020-PA-102  
The Library's Anti-Harassment Policy Has Many Strengths, Although Steps Are Needed to Improve Policy Implementation

Recommendation number: 1

Recommendation: Document EEO/DP's role and responsibilities for preserving confidentiality for the anti-harassment, EEO complaint, and ADR processes in EEO/ standard operating procedures in fulfillment of Library policy, including the responsibilities of EEO/DP staff to preserve confidentiality during the processes.

Responsible office: EEO/DP

Comments: Draft a Standard Operating Procedure on QI FY23 roles and responsibilities for preserving DP's confidentiality for the anti-harassment, EEO complaint and ADR process in EEO DP.

Target completion: Q1 FY23

Recommendation number: 2

Recommendation: For the benefit of Library employees unfamiliar with the Library's anti-harassment, EEO complaint, and ADR processes, communicate more complete information about the confidentiality of the anti-harassment, EEO complaint, and ADR processes on EEO/DP's intranet website.

Responsible office: EEO/DP

Comments: Add a section on confidentiality to the EEO/DP intranet website in the anti-harassment, EEO, and ADR processes.

Target completion: Q1 FY23

Recommendation number: 3

Recommendation: Document EEO/DP's role and responsibilities in its standard operating procedures when employees contact it directly about alleged harassment, including sexual harassment, but do not intend to file a dispute or complaint of harassment in a timely manner.

Responsible office: EEODP

Comments: Draft a Standard Operating Procedure specifying that procedures contained in LCD 120.1, Anti-Harassment and Retaliation Policy, will be followed as stated, regardless of whether an employee contacts EEO/DP directly or EEO/DP is notified by management as required by the directive.

Target completion: Q1 FY23

Recommendation number: 4

Recommendation: Implement mandatory sexual harassment prevention training, or broader training on employment discrimination that addresses sexual harassment regularly, such as annually or biennially, for all Library employees.

Responsible office: LIBN, Chief of Staff

Comments: Develop or procure training on employment discrimination and implement as mandatory on a schedule to be determined by the Chief of Staff.

Target completion: Q4 FY23

Recommendation number: 5

Recommendation: Update the out-of-date information in EEO policies (i.e., the appropriate regulations and directive) for the anti-harassment, EEO complaint and ADR processes.

Responsible office: EEODP, OGC

Comments: EEODP will review all anti-harassment, EEO complaint and ADR processed for out of date information and send updates to the Office of General Counsel for Librarian approval and issuance.

Target completion: Q1 FY23

Recommendation number: 6

Recommendation: Establish a system to update EEO policies for the anti-harassment, EEO complaint, and ADR processes as soon as possible when changes are made.

Responsible office: EEODP

Comments: Write a Standard Operating Procedure to update EEO policies for anti-harassment, EEO complaints and ADR processes when changes are made.

Target completion: Q1 FY23

Recommendation number: 7

Recommendation: Implement a procedure requiring EEO/DP Counselors to provide written materials about the EEO complaint process and aggrieved individuals' rights and responsibilities during initial counseling. EEO/DP should document the procedure in its standard operating procedures.

Responsible office: EEODP

Comments: Develop written materials for the EEO process during initial counseling and write a Standard Operating Procedure requiring Counselors to share these written materials.

Target completion: Q1 FY23

Recommendation number: 8

Recommendation: Implement a procedure in which EEO/DP provides acknowledgment upon receipt of formal complaints of discrimination. EEO/DP should document the procedure in its standard operating procedures.

Responsible office: EEODP

Comments: Write a Standard Operating Procedure providing that EEODP will acknowledge receipt of a formal complaint of discrimination.

Target completion: Q4 FY22

Recommendation number: 9

Recommendation: Implement a procedure to notify aggrieved individuals in writing if the complaint investigation will not be timely. The notification should include the estimated date by which EEO/DP will complete the investigation and the aggrieved individuals' rights EEO/DP should document the procedure in its standard operating procedures.

Responsible office: EEODP

Comments: Write a Standard Operating Procedure notifying individuals in writing if the complaint of investigation will not be timely.

Target completion: Q1 FY23

Recommendation number: 10

Recommendation: Incorporate a performance expectation into the EEO/DP Chiefs performance plan that the Chief will enforce compliance with the requirements of EEO/DP outlined in the regulations and directive for the anti-harassment, EEO complaint, and ADR processes.

Responsible office: Chief of Staff

Comments: This was an oversight in the move to the new online performance system. The EEODP Chief's performance plan historically contained this requirement and will continue to state the Chief will enforce compliance with requirements and directives for the anti-harassment, EEO complaint and ADR processes.

Target completion: Q4 FY22

Recommendation number: 11

Recommendation: Document in EEO/DP's standard operating procedures how it will measure the official start and end times for EEO complaint process activities (e.g., when the initial 45-calendar day deadline for submitting an informal complaint ends, when the Counselor's inquiry starts, and when the Investigator's review ends).

Responsible office: EEODP

Comments: Write a Standard Operating Procedure reiterating the 45 day filing timeline requirement stated in Library of Congress Regulation 11 -311, Resolving Complaints of Discrimination at the Library; and the timeline for Counseling; and the timeline for investigations.

Target completion: Q1 FY23

Recommendation number: 12

Recommendation: Modify the EEO/DP tracking spreadsheet to track the timeliness of EEO/DP's EEO complaint activities and the EEO complaint process generally using the start and end times documented in EEO/DP's standard operating procedures.

Responsible office: EEODP

Comments: The timelines have been added to the EEODP tracking spreadsheet and provided to the OIG. We can review the timelines against the SOP created for finding 11, but do not expect to make any changes.

Target completion: Q1 FY23

Recommendation number: 13

Recommendation: Require EEO/DP to report on the timeliness of its EEO complaint activities, and the EEO complaint process generally, to the Chief of Staff and in its annual report.

Responsible office: EEODP

Comments: Write an SOP to include the timeliness of EEO complaint activities and processes to the Chief of Staff and in the annual report.

Target completion: Q1 FY23

Recommendation number: 14

Recommendation: Establish timeframes in Library policy for the Librarian to issue a FAD with or without a hearing.

Responsible office: OGC and EEODP

Comments: OGC will revise the LCRs to include time frames determined by the Librarian and negotiated with the unions.

Target completion: Q4 FY23

Recommendation number: 15

Recommendation: Develop a more rigorous EEO/DP quality control program, thoroughly document the program in EEO/DP's standard operating procedures, and initiate the program in full.

Responsible office: EEODP

Comments: Draft a Standard Operating Procedure for an EEODP quality control program.

Target completion: Q3 FY23

Recommendation number: 16

Recommendation: Require EEO/DP to complete an annual self-assessment of its operations that includes evaluating compliance with Library EEO related regulations and directives as appropriate and submit the assessment to the Chief of Staff for review.

EEO/DP should document these activities in its standard operating procedures.

Responsible office: EEODP

Comments: Draft a Standard Operating procedure for an annual self-assessment of EEODP operations.

Target completion: Q1 FY23

Recommendation number: 17

Recommendation: Require the Chief of Staff to determine the necessity of a qualified outside entity conducting periodic assessments of EEO/DP's compliance with the Library EEO-related regulations and directives as appropriate as well as with EEO/DP's own standard operating procedures.

Responsible office: Chief of Staff

Comments: Consider the most appropriate mechanism to assess EEO/DP activity and, if necessary based

on such determinations, incorporate the determination into appropriate policy or other documents.  
Target completion: Q1 FY23

Recommendation number: 18

Recommendation: Post an equal opportunity employer statement, or similar statement, accessible through the Library's internet homepage that expresses a commitment to anti-discrimination.

Responsible office: EEODP in conjunction with HCD

Comments: Vacancy announcements (e.g., on USA jobs) typically include a statement that the Library is an equal opportunity employer and USAJobs postings link to a government-wide EEO policy - see <https://www.usajobs.gov/Help/equalemployment-opportunity/>. The Library will include similar language through its publicly available web page.

Target completion: Q1 FY23

Recommendation number: 19

Recommendation: Design and implement procedures to address the real or perceived conflict of interest posed by EEO complaint cases involving influential Library officials. EEO/DP should document the procedures in its standard operating procedures.

Responsible office: EEODP

Comments: Draft a Standard Operating Procedure addressing real or perceived conflict of interest.

Target completion: Q1 FY23

Recommendation number: 20

Recommendation: Establish standards of conduct that communicate expectations to EEO/DP staff concerning integrity and ethical values associated with preserving neutrality when they must serve in multiple roles in the same EEO complaint (e.g., Counselor, Investigator, and ADR neutral). EEO/DP should document the guidance in its standard operating procedures.

Responsible office: EEODP

Comments: Draft a Standard Operating Procedure on roles and responsibilities for preserving neutrality for the anti-harassment, EEO complaint and ADR process in EEO DP.

Target completion: Q1 FY23

Recommendation number: 21

Recommendation: Establish training requirements for EEO/DP staff as appropriate for their key roles. EEO/DP should document the requirements in its standard operating procedures.

Responsible office: EEODP

Comments: Draft a Standard Operating Procedure that EEODP staff should receive appropriate training for their key roles.

Target completion: Q4 FY22

Recommendation number: 22

Recommendation: Revise EEO/DP's EEO complaint process flowchart to incorporate more complete information on the availability of the option to file a complaint of discrimination with OCWR.

Responsible office: EEODP

Comments: The OCWR processes will be clarified on the LC charts.

Target completion: Q4 FY22

Recommendation number: 23

Recommendation: Direct EEO/DP to develop an overall mission statement and then align whatever goals and performance measures it has in support of its stated mission.

Responsible office: EEODP, Chief of Staff

Comments: Draft an overall mission statement and then align goals and performance measures to support stated mission.

Target completion: Q1 FY23

#### Footnotes:

1 For example, we provided the Committee with unaudited information on reports of alleged sexual harassment at the Library over a 10-year period.

2 We assessed an anonymous hotline complaint that alleged sexual harassment in a Library reading room. See The Library's Response to An Anonymous Sexual Harassment Complaint Involving Reading Room Staff Managing Patrons' Viewing of Internet Pornography, 2020-SP-103, December 2020.

3 Our scope did not include the Office of Congressional Workplace Rights, which is not a part of the Library. The Congressional Accountability Act of 1995 Reform Act allows Library employees to file a

complaint either with the Library or the Office of Congressional Workplace Rights.

4 For example, we provided the Committee with unaudited information on reports of alleged sexual harassment at the Library over a 10-year period.

5 We assessed an anonymous hotline complaint that alleged sexual harassment in a Library reading room. See The Library's Response to An Anonymous Sexual Harassment Complaint Involving Reading Room Staff Managing Patrons' Viewing of Internet Pornography, 2020-SP-103, December 2020.

6 Our scope did not include the Office of Congressional Workplace Rights, which is not a part of the Library. The Congressional Accountability Act of 1995 Reform Act allows Library employees to file a complaint either with the Library or the Office of Congressional Workplace Rights.

7 Federal #MeToo – Examining Sexual Harassment in Government Workplaces, U.S. Commission on Civil Rights, April 2020.

8 Select Task Force on the Study of Harassment in the Workplace, U.S. Equal Employment Opportunity Commission, June 2016.

9 Federal #MeToo – Examining Sexual Harassment in Government Workplaces, U.S. Commission on Civil Rights, April 2020.

10 For the sources of the quote for the anti-harassment, EEO complaint, and ADR processes respectively, see Library of Congress Directive (LCD) 9-120.1, Anti-Harassment and Retaliation Policy, Notes section, Library of Congress Regulation (LCR) 11-311, Resolving Complaints of Discrimination at the Library, Notes section, and LCR 11-360, Alternative Dispute Resolution – Non-Bargaining Unit Employees, Notes section.

11 LCD 9-120.1, Anti-Harassment and Retaliation Policy.

12 LCR 11-311, Resolving Complaints of Discrimination at the Library.

13 LCR 11-360, Alternative Dispute Resolution – Non-bargaining Unit Employees.

14 A Guide to the Project Management Body of Knowledge (PMBOK guide) / Project Management Institute, sixth edition, 2017.

15 We sent an electronic link to our online survey, April 2021 Library Employee Survey of Sexual Harassment or Other Related Unwelcome Behavior, via email to every employee who had an email address to give each employee the opportunity to participate.

16 'Sexual Harassment' is unwelcome behavior of a sexual nature, including but not limited to unwelcome sexual advances, requests for sexual favors, physical conduct of a sexual nature, or similar behavior. It is applicable regardless of the genders of the individuals involved. The harasser may be a co-worker; a contractor or other non-employee; or a supervisor, manager or other agent of the Library, including a supervisory employee who does not supervise the victim. Some examples of what may constitute sexual harassment are: threatening or taking adverse employment action, such as demotion or removal, if sexual favors are not granted; demands for sexual favors in exchange for favorable or preferential treatment; unwelcome and repeated flirtation, propositions or advances; whistling, leering, or improper gestures; offensive, derogatory or degrading remarks; sex or sex-based pranks; and the display of sexually suggestive objects or pictures in the work area.

17 We sent our survey to 3,382 Library employees' email addresses and received 1,155 completed surveys for a completion rate of 34 percent. We did not audit the employees' email addresses provided by the Library.

18 We chose the two-year timeframe to incorporate the year prior to the onset of the COVID-19 pandemic. We wanted to include data that reflected Library employees' more typical day-to-day experience, as opposed to just when many employees were working remotely due to the pandemic.

19 Respondents also reported most often unwelcome sexually suggestive looks and gestures (45 respondents), communications (e.g., email(s), phone call(s), etc.) of a sexual nature (37 respondents), and conversations of a sexual nature (36 respondents). They also reported being stalked (27 respondents) and pressured for dates (15 respondents).

20 We asked, "What have you experienced at the Library in roughly the last two years?"

21 We asked, "Which of the following, if any, occurred as a result of experiencing sexual harassment or other related unwelcome behavior?"

22 We did not audit the Library's allegation data.

23 Table 2 provides a sampling of the comments we received. In some cases, OIG shortened the content as indicated in part to protect anonymity. Otherwise, the content provided is verbatim. Different respondents made each comment.

24 We asked, "Are you concerned about people getting away with sexual harassment or other related unwelcome behavior at the Library of Congress?"

25 We asked, "Do you feel the Library takes sufficient steps to prevent sexual harassment or other related unwelcome behavior?"

26 We asked, "Are you concerned that you will experience sexual harassment or other related unwelcome behavior at the Library of Congress?"

27 EEOC identifies issuing a policy statement annually that communicates the agency's commitment to EEO as an element of a model EEO program. EEOC also identifies the need to communicate this to applicants for employment. See EEOC, MD-715 – Part G Agency Self-Assessment Checklist, accessed at <https://www.eeoc.gov/federal-sector/management-directive/md-715-part-g-agency-self-assessment->

checklist on April 20, 2021.

28 The Government Accountability Office's (GAO) Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014, states that management should demonstrate a commitment to integrity and ethical values, such as by setting a tone at the top.

29 See EEOC, Promising Practices for Preventing Harassment, accessed at <https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment> on January 5, 2021. The guidance was approved by the EEOC Chair and issued on November 21, 2017.

30 The Committee's request letter asked OIG to determine whether Library policy adhered to "best practices." We utilized EEOC resources as applicable to identify best practices. However, we note that by statute the Librarian of Congress, not EEOC, acts as the enforcement authority for EEO-related employment complaints and disputes involving the Library.

25 We asked, "Do you feel the Library takes sufficient steps to prevent sexual harassment or other related unwelcome behavior?"

26 We asked, "Are you concerned that you will experience sexual harassment or other related unwelcome behavior at the Library of Congress?"

27 EEOC identifies issuing a policy statement annually that communicates the agency's commitment to EEO as an element of a model EEO program. EEOC also identifies the need to communicate this to applicants for employment. See EEOC, MD-715 - Part G Agency Self-Assessment Checklist, accessed at <https://www.eeoc.gov/federal-sector/management-directive/md-715-part-g-agency-self-assessment-checklist> on April 20, 2021.

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32 See EEOC, Promising Practices for Preventing Harassment, accessed at <https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment> on January 5, 2021. The guidance was approved by the EEOC Chair and issued on November 21, 2017.

33 See EEOC, Model EEO Programs Must Have An Effective Anti-Harassment Program, accessed at <https://www.eeoc.gov/federal-sector/model-eeo-programs-must-have-effective-anti-harassment-program> on January 5, 2021.

34 LCD 9-120.1, Anti-Harassment and Retaliation Policy, Section 1. Purpose.

35 Ibid, Section 2. Definitions.

36 Ibid, Section 3. Policy, paragraph 3.2.

37 LCD 9-120.1, Anti-Harassment and Retaliation Policy, Section 3. Policy, paragraph 3.1.

38 Ibid, Section 4. Reporting Harassment, paragraph 4.5.

39 Ibid.

40 Ibid, Section 3. Policy, paragraph 3.1.

41 Ibid, Section 4. Reporting Harassment, paragraph 4.4.

42 Ibid, paragraph 4.5.

43 GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014, states that management should internally communicate quality information.

44 GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014, also states that management should implement control activities through policies (e.g., standard operating procedures).

45 Table 3 provides a sampling of the comments we received. In some cases, OIG shortened the content as indicated in part to protect anonymity. Otherwise, the content provided is verbatim. Different respondents made each comment.

46 LCD 9-120.1, Anti-Harassment and Retaliation Policy, Section 4.4, Responsibilities of Managers.

47 Ibid, Section 4.7, Confidentiality.

48 This is consistent with EEOC guidance provided to employers: "An employer should make clear to employees that it will protect the confidentiality of harassment allegations to the extent possible. An employer cannot guarantee complete confidentiality, since it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses. However, information about the allegation of harassment should be shared only with those who need to know about it. Records relating to harassment complaints should be kept confidential on the same basis." See EEOC, Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, accessed at [https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors#\\_ftn65](https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors#_ftn65) on November 3, 2021. The guidance was approved by vote of the U.S. Equal Employment Opportunity Commission and issued on June 18, 1999.

49 See EEO/DP's Intake Process procedures, Section III. Procedures, and the section entitled Report of Harassment – LCR 9-130.1 Harassment Policy. We noted that the procedures inaccurately reference the Library's anti-harassment policy. The policy is Library of Congress Directive 9-120.1 and not Library of Congress Regulation 9-130.1. There is no LCR 9-130.1.

50 EEO/DP, Workplace Harassment, accessed at <https://staff.loc.gov/sites/eeodp/workplace-harassment/> on April 5, 2022.

51 LCR 11-311, Resolving Complaints of Discrimination at the Library, Section 3. Roles and Responsibilities, paragraph C.

52 Ibid, Section 4. Filing an Informal Complaint of Discrimination, paragraph A.

53 EEO/DP, The Complaint Process, accessed at <https://staff.loc.gov/sites/eeodp/the-complaint-process/> on April 6, 2022.

54 See EEO/DP's Intake Process procedures, Section III. Procedures.

55 EEO/DP, Alternative Dispute Resolution, accessed at <https://staff.loc.gov/sites/alternative-dispute-resolution/> on April 6, 2022.

56 We noted that LCR 11-360, Alternative Dispute Resolution – Non-Bargaining Unit Employees, does not state that ADR (e.g., informal discussions and mediation) is confidential, while LCR 11-311, Resolving Complaints of Discrimination at the Library, does.

57 See EEO/DP's Intake Process procedures, Section III. Procedures, 3) Alternative Dispute Resolution Options (per LCRs and CBAs).

58 The Library's Response to an Anonymous Sexual Harassment Complaint Involving Reading Room Staff Managing Patrons' Viewing of Internet Pornography, 2020-SP-103, December 2020, a not for public release report.

59 This report was also responsive to the request we received from the United States Committee on Rules and Administration for information on the Library's handling of sexual harassment cases that led us to initiate this audit.

60 EEO/DP relocated the button to its homepage, making it more accessible, after we noted in a January 2022 preliminary version of this report that it was located on a less accessible EEO/DP webpage. For EEO/DP's homepage, see Office of Equal Employment Opportunity and Diversity Programs, accessed at <https://staff.loc.gov/sites/eeodp/> on April 6, 2022.

61 LCD 9-120.1, Anti-Harassment and Retaliation Policy, Section 1. Purpose

62 Ibid, Section 3. Policy, paragraph 3.1

63 Ibid, Section 4. Reporting Harassment, paragraph 4.1

64 Ibid, paragraph 4.4

65 Ibid.

66 Ibid, paragraph 4.5

67 Ibid, Section 3. Policy, paragraph 3.1

68 GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014, states that management should establish an organizational structure, assign responsibility, and delegate authority to achieve objectives. Further, GAO states that management should implement control activities through policies (e.g., standard operating procedures).

69 Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014.

70 We asked, "Prior to this survey, did you know the Library of Congress had an anti-harassment policy?"

71 We asked, "Do you know your rights and responsibilities related to sexual harassment?"

72 We asked, "Do you know how to report sexual harassment?"

73 Table 4 provides a sampling of the comments we received. In some cases, OIG shortened the content as indicated in part to protect anonymity. Otherwise, the content provided is verbatim. Different respondents made each comment.

74 We asked, "In roughly the last two years, have you had sexual harassment prevention training?"

75 See EEOC, Promising Practices for Preventing Harassment, accessed at <https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment> on January 5, 2021. The guidance was approved by the EEOC Chair and issued on November 21, 2017.

76 The No FEAR Act does not apply to the Library of Congress as a legislative branch agency.

77 Table 5 provides a sampling of the comments we received. In some cases, OIG shortened the content as indicated in part to protect anonymity. Otherwise, the content provided is verbatim. Different respondents made each comment.

78 GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014, states that training is a means to develop competence and reinforce standards of conduct.

79 We asked, "Did any of the following occur when you reported your experience of sexual harassment or other related unwelcome behavior?"

80 Table 6 provides a sampling of the comments we received. In some cases, OIG shortened the content as indicated in part to protect anonymity. Otherwise, the content provided is verbatim. Different respondents made each comment.

81 LCD 9-120.1, Anti-Harassment and Retaliation Policy, Section 3. Policy, paragraph 3.2.

82 EEO/DP's standard operating procedures do not define EEO/DP's role and responsibilities in

relation to addressing retaliation.

83 GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014, states that management should internally communicate quality information.

84 See LCD 9-120.1, Anti-Harassment and Retaliation Policy.

85 We also noted that LCD 9-120.1, Anti-Harassment and Retaliation Policy, did not have the correct information for contacting the OIG hotline under paragraph 4.1. Employees and qualified job applicants can locate our hotline form at <https://www.loc.gov/about/office-of-the-inspector-general/contact-us/> or call us at 202-707-6314.

86 See LCR 11-360, Alternative Dispute Resolution - Non-bargaining Unit Employees.

87 GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014, states that management should internally communicate quality information.

88 Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014.

89 See EEOC, MD-715 - Part G Agency Self-Assessment Checklist, accessed at <https://www.eeoc.gov/federal-sector/management-directive/md-715-part-g-agency-self-assessment-checklist> on April 20, 2021.

90 Ibid.

91 LCR 11-311, Resolving Complaints of Discrimination at the Library, requires the Investigator to complete and submit a written report and the investigative file to EEO/DP within 60 workdays. See Section 9. Investigation of Complaints, paragraph B3.

92 See EEOC, Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110) As Revised August 5, 2015, accessed at <https://www.eeoc.gov/federal-sector/management-directive/chapter-5-agency-processing-formal-complaints> on December 13, 2021.

93 Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014.

94 LCR 11-311, Resolving Complaints of Discrimination at the Library, Section 4. Filing an Informal Complaint of Discrimination, paragraph D.

95 Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014.

96 LCR 11-311, Resolving Complaints of Discrimination at the Library, Section 2. Policy, paragraph A.

97 Ibid, Section 4. Filing an Informal Complaint of Discrimination, paragraph D.

98 Ibid, Section 9. Investigation of Complaints, paragraph B.

99 Based on GAO's internal control guidance, EEO/DP should implement control activities through policies (e.g., standard operating procedures). See GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014.

100 See LCR 11-311, Resolving Complaints of Discrimination at the Library, Section 4. Filing an Informal Complaint of Discrimination, paragraph A.

101 These complaints did not involve alleged sexual harassment.

102 According to documentary evidence, the complaint was accepted for investigation in June 2020. The investigation started in January 2021 and was completed in March 2021.

103 GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014.

104 See EEOC, MD-715 - Part G Agency Self-Assessment Checklist, accessed at <https://www.eeoc.gov/federal-sector/management-directive/md-715-part-g-agency-self-assessment-checklist> on April 20, 2021.

105 LCR 11-311, Resolving Complaints of Discrimination at the Library, Section 10. Office of Equal Employment Opportunity and Diversity Programs Chief's Decision, paragraph B.

106 See 29 C.F.R. § 1614.110(b)

107 29 C.F.R. § 1614.109(i)

108 LCR 11-311, Resolving Complaints of Discrimination at the Library, Section 2. Policy, paragraph A.

109 GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014.

110 We also noted that EEO/DP had not documented in its standard operating procedures the steps involved with performing the case file audit, including how EEO/DP documented that the audit had been completed.

111 See EEOC, Section 717 of Title VII, Equal Employment Opportunity, Management Directive 715, accessed at <https://www.eeoc.gov/federal-sector/management-directive/section-717-title-vii> on January 5, 2021.

112 The goal of barrier analysis under MD-715 is to identify the root causes of disparities in equal employment opportunities so that federal agencies can take action to remedy the policies, procedures, and practices that lead to such disparities. See EEOC, Barrier Analysis: Questions to Guide the Process, accessed at <https://www.eeoc.gov/federal-sector/management-directive/barrier-analysis-questions-guide-process> on December 10, 2021.

113 See EEOC, MD-715 - Part G Agency Self-Assessment Checklist, accessed at <https://www.eeoc.gov/federal-sector/management-directive/md-715-part-g-agency-self-assessment-checklist> on December 10, 2021.

114 Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014.

115 This occurs at least once every three years, according to the Director of Federal Sector Programs in EEOC's Office of Federal Operations.

116 We noted that the Library had assigned a low level of risk in its performance management system (i.e., Compass) to EEO/DP failing to process EEO complaints pursuant to applicable laws and regulations. Given the regulatory noncompliance we identified, the Library may want to raise the risk level until a more rigorous EEO/DP quality control program has been implemented, upon which time the risk level could be reassessed.

117 Office of Equal Employment Opportunity and Diversity Programs, accessed at <https://staff.loc.gov/sites/eeodp/> on April 6, 2022.

118 We analyzed the Library of Congress homepage accessed at [loc.gov](http://loc.gov) and the Careers webpage at [loc.gov/careers/](http://loc.gov/careers/) on April 8, 2022.

119 GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014, states that management should externally communicate quality information.

120 LCR 11-311, Resolving Complaints of Discrimination at the Library, Section 2. Policy, paragraph A.

121 See EEOC, Management Directive 110, Chapter 1, accessed at <https://www.eeoc.gov/federal-sector/management-directive/chapter-1> on April 1, 2020.

122 See EEOC, Best Practices in EEO Conflict Case Management for Federal Agencies, accessed at <https://www.eeoc.gov/federal-sector/reports/best-practices-eeo-conflict-case-management-federal-agencies> on August 30, 2021.

123 Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014.

124 LCR 11-311, Resolving Complaints of Discrimination at the Library, Section 2. Policy, paragraph A.

125 See EEOC, Management Directive 110, Chapter 2, accessed at <https://www.eeoc.gov/federal-sector/management-directive/chapter-2> on April 1, 2020.

126 Ibid.

127 Ibid.

128 See EEOC, Management Directive 110, Chapter 3, accessed at <https://www.eeoc.gov/federal-sector/management-directive/chapter-3-alternative-dispute-resolution-eeo-matters> on April 1, 2020.

129 Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014.

130 EEO/DP could also explore Shared Neutrals, an interagency mediation program involving 50 federal agencies and sub-agencies in the Washington-Baltimore metropolitan area. The Shared Neutrals roster includes federal employees who mediate as a collateral duty or government retirees who volunteer their services. EEO/DP may be able to outsource activities using this program. See <https://www.fmcs.gov/sharedneutrals/>.

131 GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014, also states that management should implement control activities through policies (e.g., EEO/DP's standard operating procedures).

132 See EEOC, Management Directive 110, Chapter 2, accessed at <https://www.eeoc.gov/federal-sector/management-directive/chapter-2> on April 1, 2020.

133 Ibid, Chapter 6, accessed at <https://www.eeoc.gov/federal-sector/management-directive/chapter-6-development-impartial-and-appropriate-factual-records> on August 31, 2021.

134 Ibid, Chapter 3, accessed at <https://www.eeoc.gov/federal-sector/management-directive/chapter-3-alternative-dispute-resolution-eeo-matters> on April 1, 2020.

135 GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014, states that management should implement control activities through policies (e.g., EEO/DP's standard operating procedures).

136 LCR 11-310, Election of Remedies for EEO Complaints of Discrimination, Section 3. Process, paragraph B1.

137 GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014, states that management should internally communicate quality information.

138 Since September 2011, we have identified strategic planning and performance management as one of the Library's top management challenges in our Semiannual Reports to Congress. We believe that many of the Library's management challenges over the years have flowed from a historic lack of proper strategic planning and performance management.

139 Executive Guide: Effectively Implementing the Government Performance and Results Act, GAO/GGD-96-118, June 1996.

140 Enriching the Library Experience, The FY 2019-2023 Strategic Plan of the Library of Congress.

141 Continued, Persistent Focus Needed to Strengthen the Library's Strategic Planning and Performance Management, 2018-SP-103, July 2018.

142 LCR 11-360, Alternative Dispute Resolution -- Non-Bargaining Unit Employees, Section 3. Definitions.

143 LCR 11-311, Resolving Complaints of Discrimination at the Library, Section 2. Policy, paragraph A.

144 Ibid, Section 3, Roles and Responsibilities, paragraph A.

145 LCD 9-120.1, Anti-Harassment and Retaliation Policy, Section 3. Policy, paragraph 3.1.

146 See EEO/DP's Intake Process procedures, Section III. Procedures, paragraph 4). EEO/DP is a neutral

office.

147 The Library's Response to An Anonymous Sexual Harassment Complaint Involving Reading Room Staff Managing Patrons' Viewing of Internet Pornography, 2020-SP-103, December 2020.

148 Our scope did not include the Office of Congressional Workplace Rights, which is not a part of the Library. The Congressional Accountability Act of 1995 Reform Act allows Library employees to file a complaint either with the Library or the Office of Congressional Workplace Rights.

149 Relevant regulations and directives are footnoted in the report's findings section.

150 We determined that EEO/DP Counselors had not been completing the Counselor's written report as required.

151 The Committee's request stated, "We would like to know whether or not the LOC has internal regulations and policies that adhere to a standard set of best practices for handling reports of sexual harassment."

152 We noted in the report that by statute the Librarian of Congress, not EEOC, acts as the enforcement authority for employment complaints and disputes involving the Library.

153 Relevant EEOC resources are footnoted in the report's findings section.

154 See GAO's Standards for Internal Control in the Federal Government, GAO-14-704G, September 2014.

155 We reviewed GAO reports and in addition to GAO's internal control guidance, we utilized guidance in GAO's Executive Guide: Effectively Implementing the Government Performance and Results Act, GAO/GGD-96-118, June 1996.

156 We also reviewed our own previously issued reports, and reports published by other Offices of Inspector General, to identify material relevant to our audit objectives.

157 We obtained evidence on the Library's anti-harassment training from EEO/DP.

158 Before providing the information, the Division determined that sharing it would not interfere with any ongoing investigations.

159 We footnoted relevant reports in the background section.

160 We determined that the specialist was qualified and competent and documented their independence per GAO's Government Auditing Standards, 2018 Revision, Technical Update, GAO-21-368G, April 2021, paragraphs 4.12 and 5.26g.

161 We took these steps to mitigate audit risk, which is the possibility that auditors' findings, conclusions, recommendations, or assurance may be improper or incomplete. See GAO's Government Auditing Standards, 2018 Revision, Technical Update, GAO-21-368G, April 2021, paragraph 8.16.

162 GAO provided expertise to OIG in the development of our survey of sexual harassment from August 2020 to approximately February 2021.

163 We sent an electronic link to our online survey via email to every employee who had an email address to give each employee the opportunity to participate. As a result, the survey results do not constitute a representative sample.

164 We sent our survey to 3,382 Library employees' email addresses and received 1,155 completed surveys for a completion rate of 34 percent. We did not audit the employees' email addresses provided by the Library.

165 'Sexual Harassment' is unwelcome behavior of a sexual nature, including but not limited to unwelcome sexual advances, requests for sexual favors, physical conduct of a sexual nature, or similar behavior. It is applicable regardless of the genders of the individuals involved. The harasser may be a co-worker; a contractor or other non-employee; or a supervisor, manager or other agent of the Library, including a supervisory employee who does not supervise the victim. Some examples of what may constitute sexual harassment are: threatening or taking adverse employment action, such as demotion or removal, if sexual favors are not granted; demands for sexual favors in exchange for favorable or preferential treatment; unwelcome and repeated flirtation, propositions or advances; whistling, leering, or improper gestures; offensive, derogatory or degrading remarks; sex or sex-based pranks; and the display of sexually suggestive objects or pictures in the work area.

166 For additional information about the survey itself, see the report's first finding.

167 As stated in GAO's Government Auditing Standards, when auditors objectively obtain and evaluate sufficient, appropriate evidence, their work can lead to improved government management, better decision making and oversight, effective and efficient operations, and accountability and transparency for resources and results. See GAO's Government Auditing Standards, 2018 Revision, Technical Update, GAO-21-368G, April 2021, paragraph 1.07.

168 GAO's Government Auditing Standards states that when auditors receive written comments from the audited entity on the report that are inconsistent or in conflict with the findings, conclusions, or recommendations in the draft report, they should evaluate the validity of the comments. Auditors should modify their report as necessary if they find the comments valid and supported by sufficient, appropriate evidence. In this case, we received comments on a preliminary version of the draft report, not the actual draft report, evaluated the comments by requesting additional evidence as appropriate, and then modified the report as needed. See GAO's Government Auditing Standards, 2018 Revision, Technical Update, GAO-21-368G, April 2021, paragraphs 9.50-9.52.

169 EEO/DP, Library of Congress EEO Complaint Process, accessed at [https://staff.loc.gov/sites/eeodp/files/2021/12/EEO\\_Flowchart.pdf](https://staff.loc.gov/sites/eeodp/files/2021/12/EEO_Flowchart.pdf) on April 7, 2022.

170 EEO/DP, Alternative Dispute Resolution, accessed at

<https://staff.loc.gov/sites/eeodp/alternative-dispute-resolution/> on April 7, 2022.

171 EEO/DP, The Complaint Process, accessed at <https://staff.loc.gov/sites/eeodp/the-complaint-process> on April 7, 2022.

172 Ibid.

173 EEO/DP, Alternative Dispute Resolution, accessed at

<https://staff.loc.gov/sites/eeodp/alternative-dispute-resolution/> on April 7, 2022.

174 LCR 11-311, Resolving Complaints of Discrimination at the Library, Section 4. Filing an Informal Complaint of Discrimination, paragraph C.

175 Ibid.

176 Ibid, paragraph D.