

GAO Highlights

Highlights of [GAO-20-414R](#), a report to the Committee on Science, Space, and Technology, House of Representatives

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Why GAO Did This Study

Increasingly, studies and news reports are highlighting the pervasiveness of sexual misconduct in the scientific community, particularly in academic and research settings. Title VII prohibits employment discrimination on the basis of sex—including sexual harassment. The Smithsonian, while not a federal grant-making agency, was established by Congress and supports a wide variety of scientific research and programs across a multitude of museums, research institutes, and research offices. GAO was asked to review how the institution responds to allegations of sexual harassment and the agency's sexual harassment prevention efforts through hiring and training policies.

This report examines: (1) the extent to which the Smithsonian has processes in place to respond to allegations of sexual harassment by employees and affiliated persons, and (2) the extent to which the Smithsonian has hiring, appointment, and training policies in place to prevent sexual harassment for employees and affiliated persons—particularly academic appointees. GAO reviewed agencies' relevant regulations and documentation and interviewed Smithsonian officials.

What GAO Recommends

GAO is making three recommendations to the Smithsonian, including updating guidance for supervisors on how to address sexual harassment complaints and establishing a tracking mechanism for sexual harassment complaints filed with supervisors. The Smithsonian agreed with all three recommendations and created and staffed a position to coordinate its future actions to implement them.

April 2020

SEXUAL HARASSMENT POLICIES

Smithsonian Has Procedures for Prevention, but Could Improve Guidance and Monitoring

What GAO Found

The Smithsonian Institution is the world's largest museum, education, and research complex. It has several thousand employees and supports or funds thousands of affiliated persons—a term Smithsonian officials use to cover all personnel working with the Smithsonian who are not employees, including contractors and volunteers. The Smithsonian provides two non-mutually exclusive processes for addressing allegations of sexual harassment for both affiliated persons and employees, according to officials (see table). The first process, developed by the Equal Employment Opportunity Commission and implemented by the Smithsonian's Office of Equal Employment and Minority Affairs, addresses formal complaints made to this office. The second, known as the management process, addresses complaints made to unit supervisors. Use of one or both processes for resolving a complaint is up to the preference of the employee or affiliated person filing the complaint. While the federal Equal Employment Opportunity Commission establishes guidance on the first process, the Smithsonian does not provide specific written guidance to supervisors on how to address complaints of sexual harassment under the second process, which is inconsistent with federal internal control standards. Supervisors might be better prepared for addressing and responding to sexual harassment complaints with specific written guidance. Nor are there procedures or processes for tracking complaints raised through that process, inconsistent with the institution's strategic plan. The Smithsonian's 2022 Strategic Plan calls for greater collaboration and coordination between central administration and other parts of the institution, and tracking could help central administration monitor trends and ensure that complaints are addressed.

Smithsonian Processes for Addressing Allegations of Sexual Harassment

Equal Employment Opportunity process	Management process
<ul style="list-style-type: none">• Implemented by the Smithsonian Office of Equal Employment and Minority Affairs• Follows the process outlined by the Equal Employment Opportunity Commission per federal law• Can address formal complaints made under Title VII	<ul style="list-style-type: none">• Implemented by Smithsonian supervisors within the units—such as museums and research institutes• Focuses on matching discipline to the level of offense• Complaints are not considered formal, nor are they tracked

Source: GAO analysis of Smithsonian Institution documentation and interviews. | GAO-20-414R

The Smithsonian has hiring, appointment, and training policies for employees and affiliated persons—specifically, academic appointees such as interns, fellows, and research associates—to help prevent sexual harassment. According to officials, all Smithsonian units are required to follow policies for hiring employees that encourage managers to check references at a candidate's prior workplace. Policies for appointees typically also require reference checks. In addition, academic appointees and employees receive information regarding the Smithsonian's prevention policies primarily through mandatory workplace harassment training, new personnel paperwork, and agency-wide directives.



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Accessible Version

April 9, 2020

The Honorable Eddie Bernice Johnson
Chairwoman
The Honorable Frank Lucas
Ranking Member
Committee on Science, Space, and Technology
House of Representatives

Sexual Harassment Policies: Smithsonian Has Procedures for Prevention, but Could Improve Guidance and Monitoring

Increasingly, studies and news reports are highlighting the pervasiveness of sexual misconduct in the scientific community, particularly in academic and research settings. The National Academies of Sciences, Engineering, and Medicine (NASEM) reported that, in 2017 alone, the media covered more than 97 allegations of sexual harassment at institutions of higher education, with some of the most high-profile cases occurring in the fields of science, engineering, and medicine.¹ Title VII of the Civil Rights Act of 1964 (Title VII) is the primary federal law that prohibits employment discrimination on the basis of race, color, religion, sex, or national origin.² According to the U.S. Equal Employment Opportunity Commission (EEOC), sexual harassment is a form of sex discrimination that violates Title VII.

The Smithsonian Institution (Smithsonian) is the world's largest museum, education, and research complex, with 19 museums and the National Zoo.³ In 2016, an allegation of sexual harassment between two Smithsonian affiliated persons was made public, leading to Congressional interest. The term "affiliated persons" is an umbrella term used to describe individuals who are not Smithsonian employees, but who are regularly present and/or work within Smithsonian facilities, according to officials.⁴ Academic appointees—a type of affiliated person—is the term used by the Smithsonian to describe interns, fellows, and research associates. In 2018, the House Committee on Science, Space, and Technology continued its

¹National Academies of Sciences, Engineering, and Medicine. *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine* (Washington, DC: The National Academies Press, 2018).

²Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.

³Congress established the Smithsonian in 1846 to administer a large bequest left to the United States by James Smithson, an English scientist, for the purpose of establishing, in Washington, D.C., an institution "for the increase and diffusion of knowledge among men." An Act to establish the 'Smithsonian Institution', for the increase and diffusion of knowledge among men, 9 Stat. 102, ch. 178, Aug. 10, 1846.

⁴Affiliated persons include, for example, Board of Regents, advisory board members, academic appointees, employees of other federal agencies housed in Smithsonian buildings, contractors, volunteers, and employees of certain organizations that Smithsonian has contractual relationships with – for example, the day care center within the Smithsonian. According to Smithsonian officials, employees are people working for the Smithsonian who have been hired through the Smithsonian's federal or trust personnel process and who are on the Smithsonian's payroll.

oversight of allegations of sexual misconduct within the scientific community with an inquiry into the Smithsonian, among other institutions and agencies. As a result of this inquiry, you asked us to review reporting mechanisms for allegations of sexual harassment at the Smithsonian and how the agency responds to these allegations in addition to agency sexual harassment prevention efforts through hiring and training policies. This report examines: (1) the extent to which the Smithsonian has processes in place to respond to allegations of sexual harassment by employees and affiliated persons, and (2) the extent to which the Smithsonian has hiring, appointment, and training policies in place to prevent sexual harassment for employees and affiliated persons—particularly academic appointees.⁵

For both objectives, we reviewed relevant laws, regulations, and documentation from the Smithsonian (e.g. Title VII, Smithsonian Directives—which include Smithsonian policies and procedures—secretary-level statements, director statements, and training materials). We also reviewed prior GAO work related to sexual harassment,⁶ a 2018 NASEM study on sexual harassment,⁷ and a 2016 EEOC report on harassment.⁸ We interviewed officials from the Smithsonian—including officials from the Smithsonian Office of the Inspector General.

We conducted this performance audit from July 2019 to April 2020 in accordance with generally accepted government auditing standards. Those standards 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 obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

While not a federal grant-making agency, the Smithsonian supports a wide variety of scientific research and programs at Smithsonian museums, research institutes, and research offices—which include the support of funding or internship, fellowship, and research associate positions.⁹ The Smithsonian is made up of 19 museums, the National Zoo, and numerous libraries, education and research centers—overseen by a Secretary, who reports to the Board of Regents.¹⁰ These museums and research centers are supported by central administrative

⁵According to Smithsonian officials, appointment and training policies for affiliated persons vary by position, with some policies being the responsibility of parties external to the Smithsonian. The Smithsonian has mandatory appointment and training policies for academic appointees—a subset of affiliated persons—and therefore academic appointees are the focus of this objective.

⁶See GAO, *Sexual Harassment in STEM Research: Agencies Have Taken Actions, but Need Complaint Procedures, Overall Plans, and Better Collaboration*, [GAO-20-187](#) (Washington, D.C.: March 19, 2020); GAO, *Women in STEM Research: Better Data and Information Sharing Could Improve Oversight of Federal Grant-making and Title IX Compliance*, [GAO-16-14](#) (Washington, D.C.: Dec. 3, 2015); and, GAO, *Gender Issues: Women's Participation in the Sciences Has Increased, but Agencies Need to Do More to Ensure Compliance with Title IX*. [GAO-04-639](#) (Washington, D.C.: Jul. 22, 2004).

⁷National Academies of Sciences, Engineering, and Medicine, *Sexual Harassment of Women*.

⁸Equal Employment Opportunity Commission, *Select Task Force on the Study of Harassment in the Workplace*, June 2016. https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf (last accessed on March 4, 2020).

⁹Smithsonian is a unique institution in the federal government. It is not an executive branch agency and does not exercise regulatory powers, except over its own buildings and grounds. The Smithsonian considers itself to be a trust instrumentality of the United States.

¹⁰For the purposes of this report, within the Smithsonian, we refer to the museums, research institutes, research offices, and centers collectively as units. According to Smithsonian officials, each unit, while reporting to a Secretary, also has its own internal management structure. The Board of Regents currently consists of nine private citizens as

offices, such as the Office of Human Resources and the Office of Fellowships and Internships, according to officials. In addition, the Office of Equal Employment and Minority Affairs (OEEMA) provides guidance to Smithsonian supervisors and employees to promote equal opportunity and compliance with federal Equal Employment and Opportunity (EEO) mandates.¹¹

The Smithsonian is responsible for complying with Title VII, which prohibits employment discrimination on the basis of race, color, religion, sex, or national origin.¹² Consistent with federal regulations, the Smithsonian defines sexual harassment—a form of sex discrimination—as a form of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any one of these three criteria is met:¹³

- Submission to the conduct is made either explicitly or implicitly a term or condition of employment.
- Submission to, or rejection of, the conduct is used as a basis for employment decisions.
- The conduct has the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile, or offensive working environment.

While multiple offices have responsibilities to prevent discrimination within the Smithsonian or support institution efforts regarding discrimination, OEEMA implements procedures under Title VII—including the complaint process for individuals alleging employment discrimination such as sexual harassment.¹⁴

well as members of all three branches of the federal government, including the Chief Justice of the United States, the Vice President, and six congressional members: three from the Senate and three from the House of Representatives.

¹¹Within the Smithsonian, OEEMA is the office responsible for overseeing employment discrimination complaints—including Title VII.

¹²The Workforce Investment Act of 1998 applied Title VII to the Smithsonian (see Workforce Investment Act of 1998, Pub. L. No. 105-220, § 341(a), 112 Stat. 936, 1092). While Title VII prohibits discrimination on a variety of bases, this report focuses on sexual harassment—a form of sex discrimination.

¹³29 C.F.R. 1604.11—Sexual Harassment. In other guidance, the EEOC states that harassment does not have to be of a sexual nature, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

¹⁴The Smithsonian's Office of the Inspector General (OIG) is an independent unit of the institution which has the authority to conduct audits and investigations involving sexual harassment as part of its work. The Office of Audits conducts independent and objective audits to improve the economy, efficiency, and effectiveness of Smithsonian's programs and operations—such as the Smithsonian's Anti-Harassment Program. The Office of Investigations receives allegations from complainants—including sexual harassment—conducts investigations if appropriate, and provides substantiated findings to the central Smithsonian administration. The investigators are fact finders only, and they do not propose any actions based on their findings, according to officials from the Smithsonian's OIG. It is up to the central Smithsonian administration to determine what disciplinary action, if any, is appropriate, according to officials from the Smithsonian's OIG. The Smithsonian's OIG will expeditiously report to the U.S. Attorney General if it has reasonable grounds to believe that there has been a violation of federal criminal law. Smithsonian OIG officials stated that while the Smithsonian's OIG has the authority to conduct this work, there are other Smithsonian units better suited to address this issue. For example, if a complainant raised a complaint regarding sexual harassment to the OIG office, Smithsonian OIG officials stated that they would inform the complainant that filing a formal complaint under Title VII must be done with OEEMA. If the complainant wished to proceed with its OIG complaint, the OIG office would investigate the complaint, according to officials from Smithsonian's OIG.

The Smithsonian Has Two Complaint Processes for Addressing Sexual Harassment, but Does Not Provide Specific Guidance on Sexual Harassment or Track Complaints for the Second Process

The Smithsonian provides two processes for addressing allegations of sexual harassment. First, sexual harassment complaints made under Title VII may be addressed under a process implemented by OEEMA, in accordance with EEOC's regulations.¹⁵ Second, supervisors can address complaints of misconduct—including sexual harassment—within the units; however, the Smithsonian does not provide written guidance specific to addressing and resolving sexual harassment complaints or tracking these complaints for this process.

Affiliated Persons and Employees Can File Sexual Harassment Complaints under the EEO Process

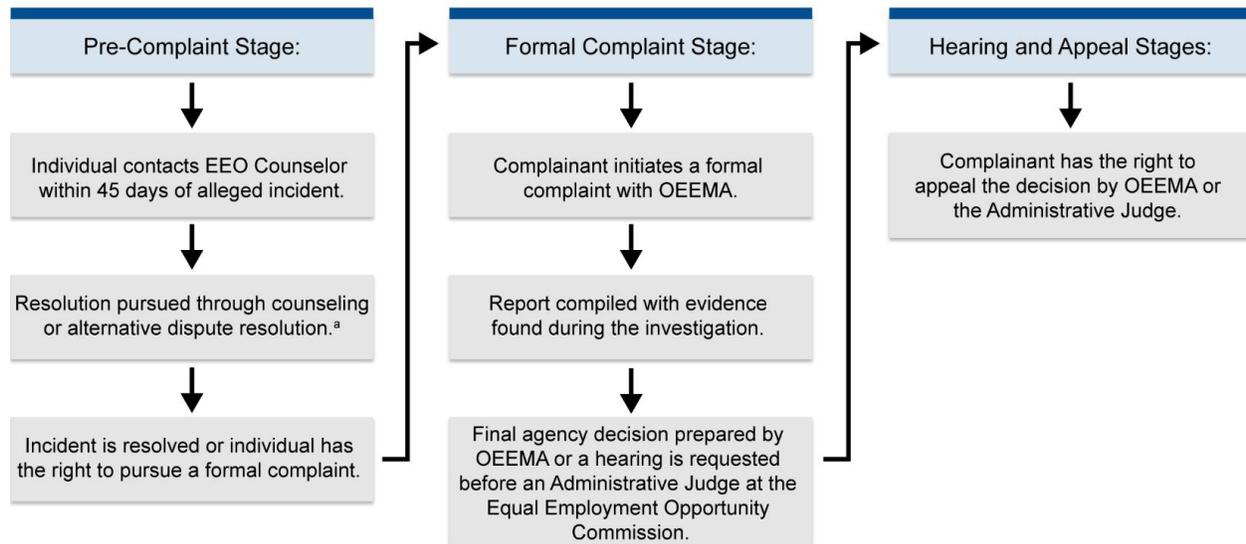
Title VII protects employees and applicants for employment against employment discrimination on the basis of sex—including sexual harassment. According to Smithsonian officials, both affiliated persons and employees may file a sexual harassment complaint under Title VII through a process referred to by the Smithsonian as the EEO process. The EEO process for such complaints is in accordance with EEOC regulations and implemented by Smithsonian's OEEMA.¹⁶ The process contains a pre-complaint stage that must be completed before a formal complaint can be filed (see fig. 1).¹⁷

¹⁵29 C.F.R. pt. 1614. Under [Executive Order 12067](#), EEOC has responsibility to coordinate the efforts of Federal departments and agencies to enforce Federal equal employment opportunity statutes, executive orders, regulations, and policies.

¹⁶The Smithsonian Tropical Research Institute—based in Panama—has a separate complaint process for their employees and applicants who are outside of the United States and are not U.S. citizens.

¹⁷Per a Smithsonian directive, if the issue cannot be resolved through the pre-complaint stage, the individual has 15 days to file a formal complaint. Until this complaint is filed, the matter is not considered a formal complaint, according to officials.

Figure 1: Equal Employment Opportunity (EEO) Complaint Process Implemented by the Office of Equal Employment and Minority Affairs (OEEMA) at the Smithsonian Institution



Source: GAO analysis of Smithsonian Institution documents and interviews. | GAO-20-414R

Text of Figure 1: Equal Employment Opportunity (EEO) Complaint Process Implemented by the Office of Equal Employment and Minority Affairs (OEEMA) at the Smithsonian Institution

1. Pre-Complaint Stage
 - a. Individual contacts EEO Counselor within 45 days of alleged incident
 - b. Resolution pursued through counseling or alternative dispute resolution.^a
 - c. Incident is resolved or individual has the right to pursue a formal complaint
2. Formal Complaint Stage
 - a. Complainant initiates a formal complaint with OEEMA
 - b. Report compiled with evidence found during the investigation
 - c. Final agency decision prepared by OEEMA or a hearing is requested before an Administrative Judge at the Equal Employment Opportunity Commission
3. Hearing and Appeal Stages
 - a. Complainant has the right to appeal the decision by OEEMA or the Administrative Judge

^aAccording to Smithsonian officials, OEEMA offers alternative dispute resolution as an option for resolution during the pre-complaint process when appropriate.

During this pre-complaint stage, the Smithsonian EEO counselor tries to resolve the situation with the assistance of the unit supervisors.¹⁸ Smithsonian officials stated that both affiliated persons and employees may initiate the pre-complaint stage, but an affiliated person's complaint may not reach the formal complaint stage, because the institution does not generally categorize affiliated persons as employees. The Director of OEEMA considers a variety of factors to determine if an employment relationship exists under the law, according to officials.¹⁹

¹⁸According to Smithsonian officials, the Office of Human Resources Labor and Employee Relations and the central Smithsonian offices are notified during the investigation and resolution process for employees, applicants for employment, and affiliated persons.

¹⁹The terms "employer" and "employee" are defined in the statutory language of Title VII, and federal courts have provided guidance as to who is considered an employee under Title VII. For example, the common law test for employee status is a generally accepted method of determining if someone is considered an employee under Title VII. According to the EEOC Compliance Manual, examples of factors indicating that a worker is in an employment

According to Smithsonian officials, affiliated persons could be found to have an employment relationship with the Smithsonian on a case-by-case basis. If an affiliated person is not considered by OEEMA to be an employee under Title VII, the complaint may be dismissed, according to Smithsonian officials.²⁰ According to Smithsonian officials, OEEMA received two complaints of sexual harassment in its science units from fiscal year 2012 through 2019, only one of which continued through the formal complaint process. Both complaints were from affiliated persons.²¹

Affiliated Persons and Employees Can Report Sexual Harassment to Supervisors, but Smithsonian Does Not Provide Specific Guidance on Sexual Harassment or Track These Complaints

Both affiliated persons and employees can also report sexual harassment to their supervisors through what is known as the management process, although this would not initiate a formal complaint under the EEO process, according to Smithsonian officials.²² According to responsibilities laid out in the 2018 Smithsonian Directive 214, supervisors are responsible for ensuring prompt and appropriate inquiry and corrective actions in response to reports of inappropriate workplace conduct or comments.²³ Supervisors are also responsible for taking appropriate action against those individuals responsible for discrimination, harassment, or reprisal and for coordinating with the Office of Human Resources Labor and Employee Relations, as the supervisor deems appropriate. According to a Smithsonian guidance document for supervisors, a “conduct-based” action should be taken when the supervisor deems an employee's conduct to be inappropriate for the workplace.²⁴ The Smithsonian encourages progressive discipline of employees, imposing penalties on a progressively severe basis to the extent that it is feasible to do so. Smithsonian policy encourages use of the minimum penalty likely to correct unacceptable conduct, with circumstances of the case dictating the severity of the action (see fig. 2).

relationship with an employer include that the work is performed on the employer's premises, the employer sets the hours of work and the duration of the job, and the worker is considered an employee for tax purposes. According to Smithsonian officials, if an individual does not agree with the Director of OEEMA's decision regarding whether or not they can be considered an employee under Title VII, he or she can file an appeal with the EEOC.

²⁰According to Smithsonian officials, affiliated persons who are students at universities subject to Title IX may exercise their Title IX rights at their university, although according to officials, the university Title IX offices do not have authority over Smithsonian personnel. Title IX of the Education Amendments of 1972 is the primary federal law that prohibits discrimination on the basis of sex, including sexual harassment, in education programs and activities receiving federal financial assistance. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681-1688.

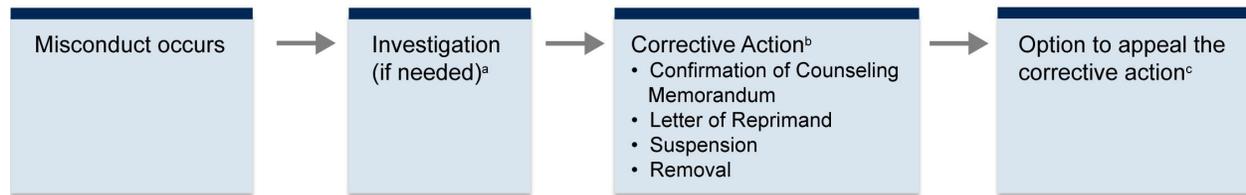
²¹There was a finding of no discrimination for this formal complaint, according to officials. The science units include the National Museum of Natural History, the Smithsonian National Zoological Park and Conservation Biology Institute, the Smithsonian Astrophysical Observatory, the Smithsonian Environmental Research Center, and the Smithsonian Tropical Research Institute.

²²Smithsonian officials stated that employees and affiliated persons may use the management and EEO process simultaneously, and that filing a complaint under one process does not affect the other process.

²³Smithsonian Directive 214 provides policies for promoting equal opportunity at the Smithsonian.

²⁴The Supervisor's Compass is a guidance document developed by the Office of Human Resources Labor and Employee Relations. It contains step-by-step guidance on how to identify inappropriate conduct in the workplace and respond accordingly. The document covers inappropriate conduct in general and is not specific to harassment or discrimination.

Figure 2: Flowchart of Smithsonian’s Conduct-Based Action Process for Employee Discipline



Source: GAO analysis of Smithsonian Institution documents and interviews. | GAO-20-414R

Text of Figure 2: Flowchart of Smithsonian’s Conduct-Based Action Process for Employee Discipline

1. Misconduct occurs
2. Investigation (if needed)^a
3. Corrective Action^b
 - a. Confirmation of Counseling Memorandum
 - b. Letter of Reprimand
 - c. Suspension
 - d. Removal
4. Option to appeal the corrective action^c

Note: This process is followed for recurrences of misconduct as well.

^aAccording to Smithsonian guidance, an investigation is typically only needed when the supervisor does not witness the misconduct firsthand or is lacking essential information.

^bCorrective action for employees ranges in severity and includes counseling, a letter of official reprimand, and varying degrees of suspension and removal, according to Smithsonian guidance. Counseling is not considered to be an adverse action and it does not become a part of the official personnel folder. Although, it may be used to support more severe disciplinary actions later. For suspension and removal actions, supervisors must propose the action and have it reviewed by the Office of Human Resources Labor and Employee Relations prior to issuance. The employee can file a reply to this proposed action before a decision is made and the action is taken.

^cAccording to Smithsonian guidance, certain employees have the right to file a grievance or an appeal, in certain cases. According to Smithsonian officials, appeal rights depend on a variety of factors—including an employee’s length of service, union, status, etc. According to Smithsonian officials, while affiliated persons can report sexual harassment to their supervisors through the management process, affiliated persons accused of misconduct—including sexual harassment—do not follow the same process as seen in Figure 2. Progressive discipline procedures do not apply to affiliated persons, whose appointments can be revoked at the Smithsonian’s discretion, according to officials.

Smithsonian documents provide written guidance to supervisors on managing inappropriate conduct in the workplace or having challenging conversations; however, they do not provide guidance on how to approach sexual harassment.²⁵ Smithsonian documents also provide several hypothetical examples of how to handle other forms of misconduct, including an employee screaming at his supervisor, leaving the work site early without permission, and improper use of agency-issued materials.

The *Standards for Internal Control in the Federal Government* states that management should internally communicate the necessary quality information to achieve its objectives.²⁶ This communication includes conveying information down and across reporting lines to allow staff to

²⁵Smithsonian Directives 212 and 213 (Chapter 752) contain the Smithsonian’s policy and procedural guidance on disciplinary and adverse actions affecting employees. The most recent version of Smithsonian Directive 212 Chapter 752 was published in 1983 and Smithsonian Directive 213 Chapter 752 was published in 1988. The Supervisor’s Compass—a step-by-step guidance document to direct supervisors on conduct-based actions—was issued in 2002. Smithsonian officials stated that the Institution plans to provide increased guidance for supervisors through a manager’s portal and toolkit they hope to finalize in fiscal year 2020.

²⁶GAO-14-704G.

perform key roles in achieving objectives and addressing risks. These standards also state that management should implement control activities through policies, which may include defining policies through procedures or guidance. Additionally, the 2018 NASEM report highlights the need for leadership training programs to include how to recognize and handle sexual harassment issues in a manner that improves the culture and climate rather than just protects against liability. Supervisors might be better prepared for the difficult task of addressing and responding appropriately if Smithsonian provided specific written guidance on how to handle complaints of sexual harassment made through the management process.

Further, OEEMA and the central Smithsonian administration do not track or consistently receive information on sexual harassment complaints filed under the management process. According to officials, there are no procedures or requirements for supervisors within the units to report complaints of sexual harassment to the central Smithsonian administration, such as the Office of Human Resources or OEEMA.²⁷ Officials stated that the central Smithsonian administration typically becomes aware of a complaint made to supervisors under the management process once supervisors consult a central office—such as the Office of Human Resources or the Office of General Counsel—for advice or assistance. According to officials, while supervisors are encouraged to contact the central Smithsonian administration for assistance, it is not required.²⁸ According to the Smithsonian’s 2022 Strategic Plan, the institution is seeking to become “one Smithsonian” through strategies such as fostering greater collaboration and coordination between the central administration and other parts of the institution.²⁹ Having procedures for supervisors to report complaints to the central Smithsonian administration could aid in fostering greater coordination between the central administration and the units, and could provide the institution with data on complaints for monitoring trends and to ensure that reported complaints are handled appropriately and consistently. According to the 2018 NASEM report, providing leadership with the tools needed to combat and handle sexual harassment in the organization—tracking procedures, in this case—is a step that some academic organizations have taken to reduce or prevent sexual harassment.

The Smithsonian conducts a yearly Smithsonian Employee Perspective Survey, which the institution uses to monitor the perception of equal employment opportunity and a discrimination-free workplace, according to the institution’s fiscal year 2018 Annual EEO Program Status Report. Affiliated persons are not surveyed as a part of this effort because they are not permanent Smithsonian employees. According to officials, affiliated persons at any given time make up a large proportion of all personnel within the Smithsonian.³⁰ The *Standards for Internal*

²⁷Smithsonian officials reported that, on January 27, 2020, the Board of Regents approved a recommendation from its Compensation and Human Resources Committee, establishing guidelines for the central Smithsonian administration to provide the committee with an annual report on sexual harassment and workplace culture and to report certain sexual harassment claims to the committee as they arise, including claims against senior officials, multiple claims against a single person or within a single department, claims involving children, or other claims posing material legal or reputational risks.

²⁸Smithsonian officials noted that they believe supervisors regularly consult with a central office regarding complaints. Officials are aware of 21 complaints of sexual harassment within the science units filed under the management system from fiscal years 2012 through 2019, with 2 employees and 7 affiliated persons departing the Smithsonian as a result of complaints of sexual harassment made against them. In two of the instances, the Smithsonian terminated appointments of affiliated persons when it became aware of complaints made about them by other organizations, according to officials.

²⁹<https://www.si.edu/sites/default/files/about/smithsonian-2022-strategic-plan.pdf> (last accessed on January 31, 2020).

³⁰According to officials, in fiscal year 2018, the Smithsonian hosted 1,982 interns—with appointments ranging from one week to six months. During this same time, there were 766 fellows, with appointments not more than three years,

Control in the Federal Government states that management should use quality information to achieve the entity's objectives.³¹ This quality information can be used to make informed decisions and evaluate the entity's performance in achieving key objectives and addressing risks. According to the 2018 NASEM report, research shows that, by far, the greatest predictor of the occurrence of sexual harassment is the organizational climate. While tracking reports of sexual harassment—as mentioned above—provides necessary information on reported incidences, the NASEM report stated that measuring the problem based solely on such information, and without regular climate surveys, may allow a problematic climate to persist. By including affiliated persons in surveys related to organizational climate, the Smithsonian leadership may obtain quality information that provides a more comprehensive view of the climate of the institution.

The Smithsonian Has Hiring, Appointment, and Training Policies to Help Prevent Sexual Harassment

The Smithsonian has hiring, appointment, and training policies, for affiliated persons—specifically academic appointees—and employees, to help prevent sexual harassment.³² According to Smithsonian officials, appointment and training policies for affiliated persons vary dependent on position. For example, some affiliated persons, such as contractors and employees from other federal agencies, receive training from their own employers and are not trained by the Smithsonian. The Smithsonian does, however, have specific policies for appointment and training for academic appointees—including interns, fellows, and research associates. According to Smithsonian officials, hiring policies for employees and appointment policies for academic appointees encourage or require reference and background checks, although policies for academic appointees may vary. Academic appointees and employees also receive training and information to help prevent sexual harassment.

Hiring Policies for Employees and Appointment Policies for Academic Appointees Include Reference and Background Checks

According to Smithsonian officials, all Smithsonian units are required to follow internal policies for hiring employees, which encourage managers to perform reference checks by contacting a prospective employee's former managers.³³ An employee reference check may reveal prior disciplinary infractions, such as a sexual harassment finding at a prior workplace.³⁴ As a result, Smithsonian officials may consider the disciplinary record in personnel decisions, such as hiring or promoting an employee. Smithsonian officials said the institution does not keep track of either

1,213 research associate positions, with appointments up to three years in length, and 6,896 on-site volunteers, averaging 15 hours per month. In fiscal year 2018, the Smithsonian had 6,749 employees, according to officials.

³¹GAO-14-704G.

³²According to Smithsonian officials, affiliated persons are not hired but instead they are appointed to their position.

³³The Smithsonian Tropical Research Institute (STRI) is the only unit of the Smithsonian based outside of the United States, in Panama. STRI has its own hiring policies for Panamanian hires.

³⁴According to Smithsonian officials, while the Smithsonian does not withhold information about disciplinary actions—including issues related to sexual harassment—from potential employers, some institutions or employers may not reveal personnel issues due to privacy laws or internal policies. Therefore, the reference checks may not reveal all prior issues. In at least two instances from fiscal years 2012-2019, the Smithsonian learned of past instances of sexual harassment not previously known to the institution.

how many applicants were denied a position or how many employees were denied a promotion due to a sexual harassment finding.

Policies for academic appointees typically require reference checks but may vary by position and unit requirements. The Smithsonian Online Academic Appointment system, the primary portal for applications from prospective academic appointees, has a module dedicated to this purpose. Smithsonian officials stated that conduct resulting in the early termination of an academic appointee's tenure at the Smithsonian is noted in their Smithsonian academic appointee database record and may be used as a reason to deny future Smithsonian academic appointments. Smithsonian officials do not keep track of how many prospective academic appointees were not appointed due to a sexual harassment finding.

In addition, the Smithsonian validates the identity of, and conducts background investigations on, employees and academic appointees receiving Smithsonian identification credentials, which are issued to people who are present at the Smithsonian for more than 30 calendar days and who require unescorted access to staff-only areas.

Academic Appointees and Employees Receive Training and Information on Sexual Harassment Prevention

New academic appointees and employees must take mandatory training on the prevention of harassment in the workplace. Smithsonian's workplace harassment training encompasses information about various forms of harassment and discrimination prohibited by law—including sexual harassment. Table 1 provides examples of some of the mandatory training for all new employees and supervisors at the Smithsonian. There may be additional training required for specific positions or within individual units.³⁵

Table 1: Examples of Mandatory Sexual Harassment Training for New Employees and Supervisors at the Smithsonian

New Employees ^a	<i>Prevention of Workplace Harassment for New Employees (Equal Employment Opportunity [EEO] 100)</i> <ul style="list-style-type: none">• Mandatory for all new employees—both supervisory and non-supervisory.^b• Includes rights and responsibilities to work in a discrimination- and harassment-free work environment.• Defines forms of sexual harassment and how to report incidents.
New Supervisors ^c	<i>Equal Employment Opportunity Training for Supervisors (EEO400)</i> <ul style="list-style-type: none">• Mandatory for all new supervisory employees.

³⁵The Smithsonian also provides training for supervisors in the Fundamentals for Supervisors training series—including information on having challenging conversations and managing employee conduct via the management process.

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- Includes a description of the EEO process, anti-discrimination laws, regulations and policies, best practices, discrimination case studies, reasonable accommodations, and implicit/unconscious bias.
 - Includes scenarios to help determine if an incident is considered sex discrimination—including a scenario specific to sexual harassment.
-

Source: GAO analysis of Smithsonian Institution documents. | GAO-20-414R

^aExisting employees are required to take refresher training—Prevention of Workplace Harassment Refresher for Employees (EEO300)—every 3 years.

^bNew employees participating in the new supervisor training (EEO400) do not have to participate in EEO100.

^cExisting supervisors are required to take refresher training—Prevention of Workplace Harassment Refresher for Supervisors (EEO600)—every 3 years.

Officials stated that the National Museum of Natural History, the unit with the largest number of academic appointees within the Smithsonian, piloted an online training course for academic appointees within that unit in fiscal year 2019.³⁶ The Office of Fellowships and Internships, which oversees academic appointees, implemented a requirement in November 2019 that academic appointees across the units take the online prevention of workplace harassment course—EEO300—no later than 30 days after their appointment start date.³⁷ According to officials, the Office of Human Resources tracks training for employees, annually notifying units of individuals who are due to complete a refresher course. As training for academic appointees is a recent requirement, officials stated that the unit coordinators are responsible for ensuring academic appointees take the training within 30 days.

Academic appointees and employees receive information regarding Smithsonian policies on the prevention of workplace harassment—including sexual harassment—as well as information on how to file complaints of sexual harassment primarily through training and paperwork received during the hiring or appointment process. For example, the online training for academic appointees on the prevention of workplace harassment includes digital copies of the most recent Smithsonian policy statements on workplace harassment and diversity. Smithsonian-wide directives, such as the EEO policy statement and handbook, also include guidance for both employees and academic appointees on Smithsonian’s prevention of workplace harassment policies and procedures.³⁸ Furthermore, Smithsonian officials told us that academic appointees and employees receive information on ways to prevent sexual harassment during unit meetings or unit-requested training, on an ad-hoc basis.

³⁶The Smithsonian did not have a mandatory training requirement for academic appointees regarding the prevention of workplace harassment until fiscal year 2019. The newly-required mandatory training is the same course that employees take as a refresher course (EEO300), but is offered external to the institution’s firewall to allow access for academic appointees without Smithsonian email addresses.

³⁷Academic appointees would not be required to take the training again unless their appointments lasted longer than 3 years or if they start another appointment more than 3 years after completing training for their first appointment, according to officials. Officials stated that it was rare for an appointment to last longer than 3 years.

³⁸Smithsonian Directive 214.

Conclusions

While studies and news reports have highlighted sexual misconduct in the scientific community, there are opportunities to reduce its prevalence. The Smithsonian provides two processes through which employees and affiliated persons may bring complaints of sexual harassment. The Smithsonian does not provide written guidance for supervisors on how to address sensitive issues such as complaints of sexual harassment made through the management process. With specific written guidance on how to handle complaints of sexual harassment made through the management process, supervisors may be better prepared to handle and respond to these sensitive concerns.

Additionally, Smithsonian does not track complaints filed with supervisors under the management process nor is there a formal process for reporting information up to the central Smithsonian administration. By tracking complaints and having procedures, the Smithsonian may be able to collect valuable data to assist in monitoring trends to ensure that reported complaints are handled appropriately and consistently.

Furthermore, the Smithsonian does not include affiliated persons in its annual survey on organizational climate. Since thousands of affiliated persons cycle in and out of the Smithsonian each year, including them in efforts to assess organizational climate may provide the Smithsonian with a more comprehensive view of the culture and climate, which according to the 2018 NASEM report, is critical to the prevention of sexual harassment.

Recommendations for Executive Action

We are making a total of 3 recommendations:

1. The Secretary of the Smithsonian should develop written guidance for supervisors specific to how to address complaints of sexual harassment filed under the management process—which may include updating current written guidance for supervisors on handling misconduct, such as the Supervisor’s Compass and Smithsonian Directives 212 and 213 (Chapter 752).
(Recommendation 1)
2. The Secretary of the Smithsonian should establish a tracking mechanism for complaints of sexual harassment filed under the management process—including procedures for supervisors within the units to convey reports of sexual harassment to the central Smithsonian administration and/or OEEMA.
(Recommendation 2)
3. The Secretary of the Smithsonian should include affiliated persons in measures used to assess organizational climate at the Smithsonian—which may include incorporating affiliated persons into current efforts or developing additional measures specific to these persons.
(Recommendation 3)

Agency Comments

We provided a draft of this product to the Smithsonian Institution for review and comment. In its written comments, reproduced in enclosure I, the Smithsonian agreed with all three of our recommendations and identified actions it has taken, and plans to take, to implement them. Specifically, the Smithsonian stated that it created and staffed an Anti-Harassment and Workplace Violence Prevention Coordinator position as of February 17, 2020. The coordinator

will work toward implementing GAO's recommendations which include: (1) implementing new reporting and tracking procedures for complaints; (2) updating policies, handbooks, and guides for supervisors; and (3) conducting surveys of Smithsonian-affiliated persons, such as interns and fellows. In addition, the Smithsonian stated that the Board of Regents has directed senior management to report on workplace culture and climate, on an annual basis, and certain kinds of sexual harassment complaints as they arise to the Compensation and Human Resources Committee. The Smithsonian also provided us with technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committee; the Board of Regents of The Smithsonian Institution; and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-6888 or neumannj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Mark Gaffigan (Managing Director), Robert Marek (Assistant Director), Janay Sam (Analyst-in-Charge), Nora Adkins, Cindy Brown Barnes, Caitlin Cusati, Nkenge Gibson, Cindy Gilbert, Anika McMillon, Kristen Pinnock, Amanda Postiglione, Nyree RyderTee, and Benjamin Shouse.



John Neumann

Managing Director, Science, Technology Assessment, and Analytics

Enclosure - 1

(103685)

Enclosure – Agency Comment Letter



Smithsonian Institution

Lonnie G. Bunch III
Secretary

March 24, 2020

Mr. John Neumann
Managing Director
Science, Technology Assessment, and Analytics
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Neumann,

As the Secretary of the Smithsonian, it is my responsibility to provide a workplace free of discrimination for our employees, but also for the thousands of volunteers, interns, fellows, and affiliated researchers that make up our community. We greatly appreciate the work of the Government Accountability Office and agree with its recommendations, some of which are already in development at the Smithsonian.

Just as this is a top priority for me, our Board of Regents also wants to ensure that the Institution promotes an inclusive and respectful work environment free from harassment. To that end, they have directed senior management to report to the Compensation and Human Resources Committee annually on workplace culture and to report information about certain sexual harassment complaints as they arise.

We have created and filled a full-time position of an Anti-Harassment and Workplace Violence Prevention Coordinator (AHC) as of February 17, within the Office of Human Resources. The AHC role will be essential in successfully implementing the GAO recommendations, including implementing new reporting and tracking procedures for complaints, updating policies, handbooks, guides for supervisors, and conducting surveys of Smithsonian affiliated persons, such as interns and fellows.

Research at the Smithsonian is not only conducted by employees, but also by volunteers, interns, fellows, and affiliated researchers. They are an important part of our community, and our efforts to prevent harassment will always include them.

Sexual harassment has no place in science, or anywhere else in our culture. Thank you for your interest in the Smithsonian, and for your insights into our ongoing harassment prevention efforts.

Sincerely,



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1000 Jefferson Drive SW
Washington DC 20560-0016
202.633.1846 Telephone
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Text of Enclosure – Agency Comment Letter

March 24, 2020

Mr. John Neumann Managing Director

Science, Technology Assessment, and Analytics

U.S. Government Accountability Office 441 G Street, NW

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Lorrie Bunch