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Issue Date: 29 September 2014

Case No.: 2011 SOX 40
In the Matter of

FARLEY T. PRICE,
Complainant

v.

FEDERAL NATIONAL MORTGAGE ASSOC. (“FANNIE MAE”),
Respondent

Appearances: Mr. R. Scott Oswald, Attorney
Mr. John T. Harrington, Attorney
For the Complainant

Ms. Madonna McGwin, Attorney
Mr. Damien G. Stewart, Attorney
For the Respondent

Before: Richard T. Stansell-Gamm
Administrative Law Judge

DECISION AND ORDER – DISMISSAL OF COMPLAINT

This matter arises under the employee protection provision of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, (Public Law 107-204), 18 U.S.C. § 1514A (“Act” or “SOX”) as implemented by 29 C.F.R. Part 1980. This statutory provision, in part, prohibits companies with a class of securities registered under Section 12 of the Securities Exchange Act of 1934, or companies required to file reports under Section 15(d) of the Securities Exchange Act of 1934, including subsidiaries or affiliates whose financial information is reported in the company’s consolidated financial statements, from discharging, or otherwise discriminating against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee provided to the employer or Federal Government information relating to alleged violations of 18 U.S.C. §§ 1341 (mail fraud and swindle), 1343 (fraud by wire, radio, or television), 1344 (bank fraud), 1348 (security fraud), any rule or regulation of the Securities and Exchange Commission (“SEC”), or any provision of federal law relating to fraud against shareholders.

Procedural History

On August 2, 2010, through counsel, Mr. Price filed a complaint with the Occupational Safety & Health Administration ("OSHA"), U.S. Department of Labor ("DOL") under the SOX employee protection provisions at 18 U.S.C. § 1514A. Mr. Price asserted that Fannie Mae had violated Section 1514A of the Act by denying him an interview in May 2010 for, and a subsequent promotion to, a newly created vice president position in retaliation for multiple protected activities including: rendering findings and making recommendation regarding the inconsistent alignment of the Respondent's operational risk structure; making a complaint to Ethics and HR (human resources); presenting specific SOX violation concerns in mid-June 2010; and participating in the Respondent's investigation.

On May 20, 2011, upon completing an investigation, the Acting Regional Administrator ("ARA"), OSHA, dismissed Mr. Price's complaint. The ARA determined that while the mid-June 2010 report was a protected activity, Mr. Price's earlier complaint did not raise SOX violation concerns and the operational risk findings and recommendations were prepared by a group of employees. Additionally, the supervisor advised Mr. Price of his choice for the vice president position prior to any of the alleged protected activities. As a result, the preponderance of the evidence did not establish that Mr. Price's protected activity was a contributing factor to the adverse action. On June 9, 2011, Mr. Price objected to the findings and requested an administrative hearing.

Pursuant to a Notice of Hearing dated June 20, 2011 (ALJ I),[1] I conducted a hearing in Washington, DC on March 12, 13, 14, and 15, 2012. My decision in this case is based on the hearing testimony and the following documents: JX 2, JX 4, JX 9 to JX 26, JX 29, JX 30, JX 31, JX 33, JX 45 to JX 47, JX 61, JX 62, JX 67, JX 72, JX 74, JX 75, JX 91, JX 96, JX 97, JX 99, JX 100 to JX 102, JX 104, JX 107, JX 108, JX 112 to JX 114, JX 116, JX 118 to JX 122, JX 127, JX 131, JX 135 to JX 138, JX 142, JX 144, JX 145, JX 151, JX 166, JX 171, JX 172, JX 258, JX 260, JX 262 to JX 264, JX 266, JX 273, JX 274, JX 287, JX 294 to JX 296, JX 299 to JX 301, JX 312, JX 314, JX 317, JX 327, JX 342, JX 349, JX 356, JX 370, JX 371, JX 372 (p. 18, lines 14 to 22; p. 23, line 11 to p. 25, line 7; p. 30, line 18 to p. 32, line 13; p. 74, line 14 to p. 76, line 15; p. 115, line 6 to p. 116, line 4; p. 119, line 10 to p. 121, line 18), JX 374 (p. 43, line 19 through line 22), JX 376 (p. 63, line 15 through p. 64, line 7), JX 380 (p. 8, lines 7 through 20), JX 383, JX 384, JX 386, JX 391 to JX 393, JX 395 (p. 429, line 16 to p. 430, line 14; p. 430, line 15 to p. 431, line 1; p. 431, line 14; p. 439, line 13 to p. 440, line 14; p. 411, lines 4 to 10; p. 441, line 11 to p. 442, line 11; p. 443, line 7 to p. 444, line 3; p. 530, line 8 to p. 532, line 7, and p. 612), JX 397 (p. 970, line 6 to p. 971, line 6; p. 989, line 1 to p. 994, line 7; and p. 1111, line 16 to p. 1112, line 14), JX 398 (p. 1328, line 21 to p. 1329, line 6), JX 400, JX 401, JX 403, JX 406, JX 407, JX 409 JX 411, JX 414, JX 417, JX 419, JX 420, JX 424, JX 444 to JX 456, JX 461, JX 466 (p. 7, line 8 to p. 8, line 10; p. 9, lines 4 to 10; p. 11, lines 3 to 21; p. 12, line 8 to p. 13, line 15; p. 14, lines 5 to 18; and p. 15, line 1 to p. 16, line 10), JX 470, JX 471 (p. 1342, line 21 through p. 1372, line 3; p. 1374, line 6 through p. 1395, line 8; p. 1395, line 16 through p.

[1]The following notations appear in this decision to identify exhibits: JX – Joint exhibit, ALJ – Administrative Law Judge exhibit; and TR – Transcript.

1407, line 3; p. 1407, line 7 through p. 1412, line 4; and p. 1412, line 10 through p. 1413, line 13), and JX 472.

Parties' Positions

Complainant[2]

Mr. Price has established by a preponderance of the evidence all three requisite elements for protection under the SOX whistleblower provision. First, he engaged in SOX protected activities by preparing and presenting the "Dallas" report, and making a complaint that Mr. Terry Edwards had acted against his candidacy for a newly created vice president position. Second, Mr. Price suffered adverse personnel action when Mr. Edwards tried to end his candidacy, and Fannie Mae and Mr. Edwards did not select Mr. Price for the vice president position. Third, Mr. Price's protected activities were contributing factors in the adverse actions.

In the Dallas study, Mr. Price disclosed violations, or likely violations of SEC rules and regulations, regarding the maintenance of adequate internal controls. His concerns were reasonable since Fannie Mae's operational risk management function was inextricably linked to its internal controls for financial reporting. The Dallas study revealed that Fannie Mae's organizational and execution models were not sufficient, and the corresponding operational risk function was unreliable for the successful execution of its operational risk management program, which in turn disclosed a likely failure by Fannie Mae to maintain adequate internal controls required by SEC rules and regulations.[3] In particular, some of Fannie Mae's internal controls designed to mitigate risks of operational failure are also defined as internal controls over financial reporting, such that the Respondent's operational risk management and SOX compliance are linked both functionally and organizationally.

Based on the Dallas report, Mr. Edwards was aware that Mr. Price would do the right thing and be transparent about the problems in Mr. Edwards' organization if he were selected for the newly created vice president position. As a result, Mr. Edwards preferred Ms. Kendra Gray, a "non-risk" professional who was eager to advance her career, for the vice president position.

Mr. Edwards' preference was clearly demonstrated by the evidentiary record. Although Mr. Price met the qualifications for the position, Mr. Edwards improperly manipulated the selection process, unfairly tried to bolster Ms. Gray's candidacy, tried to intimidate Mr. Price to drop out of the competition, and advised Mr. Price that he had already selected Ms. Gray. Mr. Edwards also falsely claimed that he took these action because, even prior to the competitive process, Mr. Price's supervisor, Mr. Claude Wade, did not think Mr. Price was ready for the position; when in actuality, Mr. Wade recommended Mr. Price for the position. Additionally, due to Mr. Edwards' actions, and associated procedural irregularities, Fannie Mae's subsequent

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[2]TR, pp. 10-18 and June 1, 2012 closing brief.

[3]Specifically, Section 13(b)(2)(B) of the Security and Exchange Act of 1934, 15 U.S.C. § 78m(b)(2)(B), (publically traded company must devise and maintain an adequate system of internal accounting controls); and 15 U.S.C. § 78m(b)(2)(B)(5) (prohibits knowingly circumventing or knowingly failing to implement a system of internal accounting controls).

selection process for the vice president post was tainted. Finally, Mr. Edwards nevertheless remained the ultimate decision maker despite his purported recusal.

Fannie Mae can not establish by clear and convincing evidence that it would have taken the same adverse action absent Mr. Price's protected activities. Most notably, Mr. Edwards, who presented multiple falsehoods due to Mr. Price's protected activities, remained the final decision maker and approved the selection committee's conclusion that no internal candidate was qualified for the position thereby precluding a determination that the same result would have occurred absent Mr. Price's protected activities.

As remedies, Mr. Price seeks promotion (or full front pay, stock options, and benefits), economic damages associated with lost compensation and damage to his career and reputation, compensatory damages for emotional pain and suffering, and reasonable attorney fees and litigation expenses.

Respondent[4]

Mr. Price's SOX whistleblower complaint should be dismissed for multiple reasons. First, the Dallas report prepared by Mr. Price with two other employees did not represent a protected activity. None of Mr. Price's actions at the time were consistent with a subjective belief that he was making a SOX-protected complaint when he submitted the Dallas report. In particular, if Mr. Price truly believed the organizational structure report involved SOX-related violations a question arises as to why he did not follow Fannie Mae procedures for reporting SOX violations, which would have enabled Fannie Mae's SOX team to evaluate and potentially remediate the problems.

Regarding the objective reasonableness of the purported protected activity, no other Fannie Mae employee, including multiple experienced organizational risk management professionals, considered the report to include violations of SEC rules. And, the report only concerned the operational risk function of the Credit Department and did not discuss any financial reporting concern for potential adverse impact on Fannie Mae's financial statements. The report did not involve SOX controls which are a type of internal control that is designed to detect or prevent material misstatements in Fannie Mae's financial statements. Further, the evidentiary record does not support a determination that Mr. Price subjectively believed at the time of the Dallas study that he was reporting any SEC rule violation. He never brought any of the concerns set out in the March 22, 2010 Dallas report to the attention of the SOX team.

Regarding his internal complaint, Mr. Price never referenced any SOX violation or informed Fannie Mae officials of such concerns. Likewise, he did not mention the Dallas study. Instead, his complaint regarding Mr. Edwards' selection process was presented in terms of an EEO policy violations. Mr. Price did not reference any alleged SOX-protected concerns until his counsel brought forward the allegation in mid-June 2011.

[4]TR, pp. 981-997, and June 1, 2012 closing brief.

Regarding the alleged adverse actions, Mr. Price was not denied an interview. Instead, he was interviewed and evaluated by several experienced Fannie Mae employees who had no knowledge of his protected activities. Despite Mr. Price's assertion regarding his qualifications for the position, none of the eight interviewers selected him as the most qualified candidate. Additionally, while he suggested consideration of Mr. Price as a candidate to Mr. Edwards, Mr. Wade did not consider Mr. Price to be technically qualified, and so informed Mr. Price.

Concerning Ms. Gray, at the time he was trying to fill the new vice president position, Mr. Edwards was new to Fannie Mae and had previously filled positions without posting the them. Consequently, having encountered Ms. Gray, who he considered to be a talented operations function director, Mr. Edwards decided to recruit her for the vice president position, and believed adding HAMP responsibilities to the vice president position made sense. When Mr. Price expressed an interest in the position, he attempted to let him down gently by informing him that his lack of HAMP experience would make him unsuitable for the position.

Mr. Edwards had no input in the selection panel's determination that none of the internal candidates met the requirements for the newly created vice president position, which Mr. Price had actually established in his report, in part due to a lack of leadership and communication skills. And, concerning Mr. Edward's alleged position as the ultimate decision maker and purported bias for Ms. Gray, the evidentiary record demonstrates that no internal candidate was selected, including Ms. Gray, and if the position had been filled, the final decision maker was the Fannie Mae CEO. As a result, the interview group advised the senior HR director that an effort should be made to recruit external candidates. Eventually, while a number of external candidates with the requisite qualifications were identified, due to strategic concerns, the position was never filled.

In terms of contributing factor, several of the interviewers were unaware of the Dallas report, and the remaining members of the selection panel did not understand the report to contain SOX concerns. And, again, to the extent that Mr. Edwards may have been aware of a protected activity, the record contains no evidence that he informed the interviewers of the protected activities.

The evidentiary record establishes that Fannie Mae had a legitimate, non-retaliatory basis for not selecting Mr. Price for the vice president position. Principally, he did not meet the technical qualifications for the position. Mr. Price also did not met the leadership qualifications for the position.

Finally, the total claimed damages in the amount $13 million is based on "specious" analysis and faulty assumptions. The evidentiary record also does not support a $250,000 claim for compensatory damages. And, the statute does not permit punitive damages.

Issues

1. Whether Mr. Price engaged in a protected activity under the Act.

2. If Mr. Price engaged in a protected activity, whether that protected activity was a contributing factor in the Respondent's decision not to select him for the position of vice president.

3. If Mr. Price's protected activity was a contributing factor in the decision not to select him for the position of vice president, whether the Respondent has established by clear and convincing evidence that Mr. Price would not have been selected for the vice president position in the absence of his protected activity.

4. Damages.

Summary of Evidence

Mr. Farley T. Price
(TR, pp. 19-233, 295-347, and 357-473)

[Direct examination] For the past two years, Mr. Price has worked as the Director of Lean Six Sigma for Fannie Mae.

Mr. Price has a BA in Finance; a Master's Degree in Computer Systems Management, and a Juris Doctorate. A former public school teacher, Mr. Price is a lecturer at Montgomery College and an associate professor at the University of Maryland graduate school of management and technology. After teaching public school following college graduation, Mr. Price worked as a network administrator for about two years from about 1993 to 1994.[5] In that job, he became familiar with the technology aspect of operational risk. He then took a job with a contractor as a project manager for a migration of technology project from 1994 to 1995.

From 1997 to 2000, Mr. Price worked for Price Waterhouse as the managing director of technology, and was responsible for the technology structure supporting about 3,600 consultants. In that job, he was exposed to the people and process aspects of operational risk. During the subsequent merger with Coopers and Lybrand, Mr. Price was directly responsible for designing business processes. In his next job, Mr. Price worked for Hitachi Innovative Solutions Consulting as a project management consultant in 2000 and 2001. During the course of that employment, he helped Carey International avoid an investment in an unstable company. As a result, Carey International offered Mr. Price a permanent position as the director of business process engineering and program management. In that capacity, from 2001 to 2004, he was introduced to a specific risk reduction methodology called "Six Sigma," and became responsible for reengineering the company's accounts receivable, collection, and billing processes. Finally, Mr. Price was hired by Fannie Mae Foundation in 2004 as the managing director of technology and business operations, providing oversight for the payable process and supporting the financial systems.

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[5]Mr. Price's resume is JX 386.

As utilized by Fannie Mae, the term operational risk means the risk of loss from inadequate, or failed people, processes, and technology; legal risk; and external events. The processes include financial reporting.

From 2004 to 2007, Mr. Price was involved with the closure of the Fannie Mae Foundation and responsible for document retention necessary for accountability. Following that assignment, he became the Director of Grants and Business Operations with Fannie Mae, and had to set up the program. He implemented a centralized grant-making system, managed general operations, and gained a great deal of operational risk experience.

Eventually, Mr. Price was chosen for a job rotation into the enterprise risk division, working under Mr. Claude Wade. At that time, Mr. Price had "Lean Six Sigma" certification and became the Director of Lean Six Sigma on Mr. Wade's team in the enterprise risk division.

In 2007, Fannie Mae's performance appraisal system had three components: overall performance, which can range up to significantly exceeds ("SE"); Results, which can range from R+ to R-; and leadership, which also can range from L+ for exceeds, to L for meets expectations, to L- for not meeting expectations. In his appraisal for 2007, Joint Exhibit ("JX") 124, Mr. Price received a significantly exceeds for overall performance, R+ for results, and L+ for leadership, which were the highest ratings for all three components. In 2008, the overall performance rating was changed to fully meets, with the highest rating being FM+. In his 2008 appraisal as Director, Office of Community and Charitable Giving, Mr. Price's supervisor noted that he had been an incredible contributor and superb performer (JX 127).

By March 2009, Mr. Price had been "formally hired" into the enterprise risk division as the Director of Lean Six Sigma, and was responsible for supporting risk initiatives and process engineering initiatives. His immediate was Ms. Ana Lapera, who solely focused on Six Sigma processes. And, while he was performing risk activities in Mr. Terry Edwards' credit division his direct supervisor was Mr. Claude Wade who was the vice president for operational risk team which supported various divisions in Fannie Mae. In other words, in terms of the operational risk function, Fannie Mae had a central operations risk strategy division, which was led by Mr. Claude Wade. At that time, Mr. Terry Edwards' credit division, located in Dallas, Texas, did not have an operational risk professional. Since Fannie Mae was concerned that his division would be dealing with a lot of issues due to the foreclosure crisis, the company sent Mr. Price, who was then based in Washington DC, to the division in Dallas to work as a director of operational risk for a period of time from the summer of 2009 through March 2010.

The credit division had three primary function areas: customer service, owned real estate obtained from foreclosures, and national underwriting. The division also had two support functions, CLM responsible for claims associated with maintenance of owned real estate, and REO, which handled special accounting.

Mr. Terry Edwards was the executive vice president for the credit division. He was also in charge of the Home Affordability Modification Program ("HAMP") division. Mr. Edwards arrived in Dallas to assume his position in September 2009. Around February 2010, Mr. Edwards requested that the Dallas operational risk function be evaluated.

As the Director of Lean Six Sigma, Mr. Price performed several risk control self assessments ("RCSA"). A RCSA is a process which identifies and assesses operational risks associated with people, processes, and technology in terms of overall risk exposure. The assessments are conducted with a RCSA playbook (JX 403). Part of the risk assessment includes SOX risks, which could involve a process related to financial reporting. That is, when a business process is reviewed, a person assesses whether the controls, both SOX and non-SOX, are effective. One assessment tool is a risk and control matrix which lists potential risk areas and identifies the associated existing controls used to mitigate those risks. A process map is a graphic description of the controls that are in place. Tags are used on the process map to identify types of risk by color; for example, a green tag may represent a SOX risk, and another color might identify a compliance risk. A detailed risk profile is used to record individual risk scores based on the effectiveness of the existing control, which "gives you a sense of how risky a control is." Additionally, an asset inventory assessment refers to technology assets in a business process, such as an end user computing application ("EUC"), which include financial reporting applications. Finally, as a deliverable, a RCSA will include an executive summary, and plans for remediation and resolving identified issues, which may include financial reporting.

During the RCSA process, Mr. Price would meet with various subject matter experts, such as compliance and ethics, internal audit, SOX team, HR, data team, technology team, and accounting. The principal key activities include: collecting data; understanding the business process from the subject matter experts; collecting deficiencies; understanding the applicable controls; validating the process map and risk data; conducting a risk ranking session; evaluating and scoring risks; and communicating the results (risk and control gaps) to the business entity.

Mr. Price's performance appraisal for 2009 (JX 131) refers to an on-going RCSA being conducted by Mr. Price on the entire Dallas operation. In 2009, the foreclosure crisis, and the volume of foreclosure transactions, were straining the infrastructure of Fannie Mae. And, in Dallas they went from 200 foreclosures to 30,000 transactions. As a result, a decision was made to conduct a RCSA across the entire organization to mitigate potential risks. In part because he had been assigned to Dallas and conducted RCSAs there, Mr. Price was assigned about October 2009 to perform that "end-to-end" RCSA for the Dallas organization. Mr. Terry Edwards asked him to evaluate the entire organization end-to-end rather than focus deeply on one division because he was just coming to the credit division.

At the time, around August or September 2009, Mr. Price had also just started two smaller RCSAs in Dallas, including one study related to a SOX deficiency in the loss mitigation section identified in a recent audit. When Mr. Price told Mr. Edwards about the other audits, he told Mr. Price to help the person who requested the RCSA involving the SOX deficiency. One of the documents Mr. Price reviewed in that smaller RCSA identified SOX controls that were in place (JX 409). Another document from the internal audit department also discusses SOX deficiencies due to severe staffing shortages and poorly designed controls, and associated with a financial reporting application (JX 411). Mr. Price finished both the end-to-end RCSA and the small RCSA in January 2010.

The report by Fannie Mae's regulator, FHFA (Federal Housing Finance Agency), to Congress for 2009 indicated that operational risk management is a critical concern due to weak financial conditions and poor credit market (JX 420). The report also highlighted the accumulation of financial reporting errors during 2009 due to material weakness in disclosure controls and procedures, which shows operations risk management involves determining risk associated with financial reporting errors.

In March 2010, Mr. Price returned to Dallas with Mr. Claude Wade, and Mr. Carter to conduct an onsite evaluation of the director of operational risk. Mr. Price drafted the report and it was presented to Mr. Edwards around March 22, 2010. The report concluded that the director did not have an operational risk structure to effectively execute the company's operation risk program, in part because the subunit operated separately and no single person was looking at the business process across the entire organization. The report included a 90-day plan to bring the operational risk team into compliance and recommended the creation of a position – vice president of operational risk who would directly report to Mr. Edwards.

In addition to the report, Mr. Price wrote a memo (JX 455) to provided additional feedback. Mr. Price pointed out that the organizational structure of the national servicing organization ("NSO") reflected a compliance function with little evidence of an operational risk function. Compliance focuses on whether an organization is following its own policies and procedure and addresses whether the existing controls are preventing the organization from achieving its objectives, including financial reporting objectives. The second memo (JX 455) written about March 11, 2010 listed five key observations. In addition to noting the compliance function, Mr. Price also indicated the organization had developed its own database to track operational incidents rather than use the Fannie Mae's tool for logging operational incidents, called ACORD.[6] Use of the ACORD tool was important because the SOX team looks at the ACORD database to determine if the operational incident has SOX implications.

JX 314, dated March 21, 2010, is the main part of the three-part Dallas report that was presented to Mr. Edwards and Ms. Fulcher on March 22, 2010. The other two parts were the NSO organizational team structure and 90-day plan. The report noted that the claim and disbursement team was not supported by an operational risk function, which was a big concern because that team had 70% of the SOX controls, while 98% of the SOX issues are in claims.

JX 419 is the business plan for the credit loss management division. JX 417 lists the SOX controls for the credit division in Dallas.

JX 407 is part of the end-to-end RCSA that Mr. Price completed the first week of January 2009 and refers to the effects of the high volume of work on the Dallas organization. He noted in particular that the current technology environment was not designed to process that volume size.

[6]Automated and Centralized Operational Risk Database. *See* JX 401.

At the time he drafted and assisted in presenting the Dallas report, Mr. Price believed it disclosed a failure to maintain adequate internal controls in the Dallas organization which related to financial reporting. The report was presented by Mr. Wade, Mr. Ted Carter, director of operational risk strategy, and Mr. Price. Mr. Price was the main presenter.

For three reasons, Mr. Price believed the Dallas study disclosed inadequate financial controls. First, the claims and disbursement team was not supported by an operational risk function. And, the accounting group, which also had SOX controls in its process, did not have an appropriate operational risk professional. Second, the NSO risk team didn't have adequate training to conduct operational risk control self assessments which are used to identify SOX risks. Third, the team was using an incorrect database to record operational incidents, while the corporate SOX team relies on the ACORD database to determine if there's a deficiency. Mr. Price did not highlight all the SOX implications. He only highlighted the problems.

The Dallas report included a recommendation that a new vice president position be created with direct reporting to Mr. Edwards. A detailed job description was included, which Mr. Price prepared based on a template Mr. Wade gave him. The template came from a previous vice president of operations position. Mr. Price had to modified the job description due to changes in company structure and duties. About a dozen qualifications were listed. When Mr. Price applied for the position, he believed that he met all the qualifications, including 10 to 15 years of operational risk experience because since 1993 all his work involved operational risk management-related experience.

During the March 22, 2010 presentation, after Mr. Price announced the vice president position recommendation, Ms. Fulcher interrupted and said that he should take the position. The position was posted in April 2010. Right after the announcement, Mr. Wade suggested by email, dated April 22, 2010, that he should apply for the position (JX 30). Later in the week, Mr. Price told Mr. Wade that he thought he was qualified for the position and Mr. Wade responded that he should apply. After Mr. Price applied, he told Mr. Wade who expressed that he was happy about Mr. Price's decision. They then discussed the interview process for a vice president position, which consisted of a series of interviews. One of the persons interviewing him would be Mr. Edwards. Eventually, the CEO, Mr. Mike Williams, would make the final decision.

Mr. Price applied for the position within two or three days after the announcement. In response the HR recruiter set up on his calendar an interview with her in May.

On May 12, 2010, Mr. Price was in Dallas, working on a RCSA. In a loud voice, Mr. Edwards called him into his office while Mr. Price was standing in the hallway about three offices down. Mr. Price did not barge into his office, which would be bad form particularly if he was trying to get promoted. Mr. Edwards indicated that he had heard Mr. Price was applying for the vice president position. Mr. Price said that was correct. Mr. Edwards replied that Mr. Price was a top candidate but he had already made up his mind and was choosing Ms. Kendra Gray for the position because she had good HAMP experience. After Mr. Price responded that he still intended to make it a competitive process, Mr. Edwards leaned over from behind his desk and stated that Mr. Price was not hearing what he was saying – he had already made up his mind. Upset, Mr. Price asked if Mr. Edwards was saying that he couldn't apply for the job; that he should withdraw. Mr. Edwards then said he was telling Mr. Price that he had already made up his mind but they should still meet to discuss further opportunities if he formally withdrew. Mr. Price thanked Mr. Edwards for his candor and honesty. In response, Mr. Edwards stood up and extended his hand for a fist bump. Very upset, Mr. Price returned the fist bump because he just wanted to get out of Mr. Edwards' office without making him aware that he was running afoul of the law. And, Mr. Price hoped that Mr. Wade could straighten things out.

After his conversation with Mr. Edwards, Mr. Price immediately emailed Mr. Wade to tell him that he wasn't going to be selected (JX 29). Mr. Wade initially asked for time to think about the situation. Subsequently, Mr. Wade advised Mr. Price to continue with his efforts to interview for the position for the practice.

When he then spoke with the HR recruiter, Mr. Melissa Werner, she indicated that there did not appear to be a need to start the interview process. Mr. Price disagreed and indicated that he intended to continue with the interview process.

After he filed his compliant in May 2010, Mr. Wade told Mr. Price that he had made a $200,000 to $300,000 mistake and was going to have a black mark against him. Mr. Wade stated that after his conversation with Mr. Edwards he should have taken him to dinner. Mr. Wade also remarked that he was Mr. Price's sponsor but didn't think he was qualified for the position. When Mr. Price reminded him of his earlier recommendation, Mr. Wade reiterated that Mr. Price had made an expensive mistake.

Mr. Price did not know Ms. Gray. However, previously during a briefing concerning a HAMP RCSA, the team leader indicated that while she understood her business process, Ms. Gray did not know operational risk.

When Mr. Edwards mentioned Ms. Gray's HAMP experience, Mr. Price was surprised because he did not know the position was being expanded to cover HAMP. The announced position description had not included HAMP. The change surprised Mr. Price because Mr. Edwards' organization had recently been restructured so that officers did not have dual responsibilities, and HAMP was intended to be separate and apart from other functions since it reviewed competitors' loans. For that reason, HAMP had explicitly not been included in the recommended position description for vice president of operational risk.

Prior to the interview process, Mr. Price also heard from one of Mr. Edwards' directors that Mr. Edwards was going to have Ms. Gray follow him during an FHFA visit to see if she is a good fit. The interview process was suppose to be "open." Bringing one candidate in to be exposed to the credit organization while the other candidates do not have that opportunity, and to have that one candidate be introduced to the FHFA regulator as a candidate for the operational risk position, was "just unfair."

On May 13, 2010, Mr. Price was waiting for his first interview with the HR representative as previously scheduled. However, she didn't call so he called her and left a message. When she returned his call, Ms. Werner stated that based on a conversation with Mr. Edwards she understood that Mr. Price wasn't going to move forward with the interview process.

Mr. Price replied that was incorrect and he expected to be interviewed as scheduled. Mr. Price also informed her that Mr. Edwards' conversation with him was inappropriate. Ms. Werner responded that she needed to do some research and call him back.

After his telephone exchange, Mr. Price again emailed Mr. Wade and expressed his belief based on his exchange with Ms. Werner that Mr. Edwards had cancelled his interview (JX 26). Regardless of the repercussions, he intended to file a complaint.

The same day, May 13, 2010, Mr. Price filed an internal complaint with the ethics and HR department, with a cc to Mr. Wade (JX100). He requested an investigation into the hiring process for the vice president of operational risk because at present the process was a sham and a waste of taxpayer dollars. Specifically, prior to the human resources hiring process taking place, Mr. Edwards had informed Mr. Price that Ms. Gray was going to get the position and he need not continue the interview process because Mr. Edwards had already made up his mind. Mr. Price believed Mr. Edwards was trying to intimidate and retaliate against him for his evaluation of his organization – the Dallas report. Mr. Price attached the main body of the Dallas report to the complaint. He opined that Mr. Edwards' actions were in violation of the company's EEO and non-retaliation policy. Mr. Price asserted that he had been singled out by Mr. Edwards because to Mr. Price's knowledge Mr. Edwards had not reached out to any other candidate to advise them not to interview, or inform them that Ms. Gray is going to that the position. He believed that Mr. Edwards did not want him to get the position because he knew Mr. Price would do the right thing and be transparent with the operation risk issues in Mr. Edwards' organization. Instead, Mr. Edwards appeared to want a non-professional who could be manipulated.

Mr. Price believed some of operational duties of the new vice president would involve identifying SOX risks. Mr. Price would have made the appropriate internal and external Fannie Mae stakeholders, and regulators, aware of any operational risk issues, including those relating to financial reporting, that he discovered, and his plans for addressing those issues. For example, after presenting the Dallas report to Mr. Edwards, Mr. Price also spoke to the chief risk officer for Fannie Mae. And, shortly after, the FHFA regulators conducted a review of Mr. Edwards' organization.

Although Mr. Edwards requested the Dallas report, Mr. Price did not believe Mr. Edwards understood the complexity and breath of the report which identified an issue with one of his directors. Mr. Edwards appeared overwhelmed by the report.

Mr. Price does not have any evidence that Mr. Edwards only advised him not to apply. But, he was not aware of any other candidate traveling to Dallas at the time. And, Mr. Price had a greater familiarity with the Dallas organization based on his work there.

Mr. Price acknowledged that Mr. Edwards' action treated all the other candidates unfairly if he had already chosen Ms. Gray.

Within two weeks of his complaint, Mr. Price had two interviews with the personnel from the Compliance and Ethics department about the specifics of his concerns. Mr. Price also contacted HR about the location of his arbitration clause. Then, "the very next day, the interview process reopened for Mr. Price and he had a screening phone interview with Ms. Werner. At the conclusion of the interview, Ms. Werner said she would set up additional interviews.

In his first interview with Mr. Edwards, which only involved the two of them, and lasted for 30 minutes, Mr. Edwards stated that although he was interviewing Mr. Price he still wanted Ms. Gray. Mr. Edwards also discussed his expectations for the position, which included the vice president of operational risk being required to handle all the SOX issues. Mr. Edwards did not ask Mr. Price about his qualifications or years of experience.

Mr. Price interviewed with several individuals, including Mr. Wade, and sometimes in a group. With a few exceptions, Mr. Price believed most of the interviewers were appropriate. All participants engaged Mr. Price during the interviews. Most of the interviewers were in the Dallas organization and would have directly or indirectly reported to Mr. Edwards. Two of the interviewers, Mr. Wade and Mr. Carter, were aware of Mr. Edwards' choice of Ms. Gray because Mr. Price had cc'ed them in his emails. Mr. Price thinks Mr. Edwards may have also told two other interviewers.

On June 16, 2010, Mr. Price also submitted a follow-up memo to the compliance and ethics individuals "to make explicit that I believed this related to an SEC violations." He explained the relationship between his findings in the Dallas report and SEC-required internal controls. He also added that the 2009-requested RCSA addressed the delegations exception process that had SOX violations. Mr. Price also noted Mr. Edwards' reference to SOX issues in his first interview with him.

Eventually, Ms. Werner called Mr. Price and advised him that none of the internal candidates had been selected because no one had the 10 to 15 years of operational risk-related management experience. But, in Mr. Price's opinion, that was not accurate in regards to him, and none of the interviewers asked him about his operational risk experience. Ms. Gray had applied for the position but she was not selected.

Mr. Price believes the company eventually conducted a search for external candidates but it proved unsuccessful, and presently the position does not exist, and the operational risk structure had become even more centralized. Based on the regulator's report to Congress, Mr. Price was "very, very surprised" the position wasn't filled.

Around September 2009, as Mr. Price was chartered to do the end-to-end RCSA, a new Director of Operational Risk, Mr. John Hurt, was hired for their national servicing organization. He came from Countywide and wanted to halt the RCSA study because his former organization had used a different methodology. Mr. Price explained that Fannie Mae had a sanctioned methodology from FHFA set out in the playbook, but Mr. Hurt kept raising his concerns. So, Mr. Price contacted Mr. Ted Carter, Director for Operational Risk Strategy, but he did not provide any assistance. The difference of agreement continued and Mr. Edwards became aware that Mr. Price and Mr. Hurt had a conflict. In a discussion with Mr. Edwards, Mr. Price recommended that he let Mr. Hurt go. But that didn't happen and Mr. Price completed his RCSA. Eventually, Mr. Hurt left the company. Mr. Price did not do anything improper in dealing with the situation with Mr. Hurt. He did not threaten to get Mr. Hurt fired.

Mr. Price expected to receive a salary increase if he had been promoted to vice president. In the spring of 2010, Mr. Price salary was around $160,000. He expected the vice president position to pay above $200,000.

As a result of the way he had been treated during the selection, Mr. Price suffered emotionally and physically. The associated stress adversely impacted his sexual performance which led to a Viagra prescription. The stress did not interfere with his ability to do his work.

[Cross examination] Prior to 2009, Mr. Price did not have any experience with RCSAs using Fannie Mae's methodology. He had accomplished RCSAs at other companies. The "self" in RCSA refers to the business unit.

When Mr. Price moved from the Community and Charitable Giving Division to the credit organization, it was in a completely different role.

When Mr. Price prepared his portion of the 2009 appraisal in December 2009, the RCSA for Mr. Edwards was about 80% complete. The Dallas report was not a RCSA. Instead, Mr. Wade, Mr. Price, and Mr. Carter went to Dallas to evaluate Mr. Edward's organization's compliance with the corporate operational risk framework, or the end-to-end business process, as required by FHFA. The Dallas report was a "different type of evaluation," which did not require a process map or evaluating the "severity or likelihood of risk." Instead, the team interviewed the staff to assess whether they understood the operational risk pillar programs. They evaluated competency in terms of operational risk and whether they were using the correct tools, such as the ACORD database.

Based on the information Mr. Wade provided, Mr. Edwards asked the team to come in and assess whether his organization was in compliance with the corporate operational risk framework. Again, it was not a RCSA. However, compliance is a factor considered in the RCSA playbook (JX 403) but that compliance focuses on whether they are following their own policies and procedures. The Dallas report addressed compliance with the corporate framework. Mr. Price also observed that a RCSA is only one of the five components in terms of compliance within the corporate operational risk framework. As a result, the Dallas report was more encompassing than a RCSA.

During the evaluation of the Dallas organization, the team did not partner, or work with, the SOX team because they were not conducting a RCSA.

In his May 13, 2010 email to Ms. Christine Wolf (JX 100), Mr. Price alleged Mr. Edwards was retaliating against for his evaluation of his organization in the Dallas report. Previously, after he finished the RCSA for the credit organization, Mr. Edwards did not give Mr. Price any negative feedback. However, the prior end-to-end RCSA put Mr. Edwards on notice that Mr. Price had access to all the organization's control deficiencies, was intricately involved in his organization, and understood its weakness. At the same, Mr. Edwards asked Mr. Wade to bring a team for another evaluation even though Mr. Price was well aware of his organization.

The Dallas report was presented to Mr. Edwards and Ms. Fulcher on March 22, 2010, and in his May 13, 2010 email to Ms. Wolf, Mr. Price included the main text of the Dallas report. He did not include the 90-day plan and NSO organizational structure portion. Later, he submitted the other two other parts of the Dallas report to Ms. Fischman in June/July 2010 (JX 45 and JX 46). When he wrote the email to Ms. Wolfe, he thought he had included the entire report.

Mr. Wade sent Mr. Price to Dallas to help as an operational risk officer because he received a request from one of the directors. Mr. Wade did not receive such a request from Mr. Rich McGhee, who had a team not being supported by an operational risk function, and did not make such a request, which may explain why Mr. Wade didn't provide an operational risk officer to Mr. McGhee.

Mr. Edwards started at Fannie Mae around September 2009. Mr. Hurt started shortly thereafter.

The conduct of an evaluation by Mr. Price of the Dallas operation was consistent with the report to Congress (JX 420) which indicated that an initiative was in place to implement an operational risk oversight program.

In his May 13, 2010 complaint to HR that was forwarded to Ethics (JX 100), Mr. Price only included a portion of the Dallas report by mistake. He had been in a hurry to catch a flight, typed his memo, and set it off. Nevertheless, the segment of report that he attached "was one of the reason that Terry Edwards retaliated against me." Mr. Edwards' retaliation involved Mr. Price being called into his office and being told that he had picked another candidate and then cancelling his interview.

The attachment (JX 100) contained multiple concerns. First, and highlighted in bold, Mr. McGhee's claims and disbursement team was not being supported by an operational risk function. He emphasized this team because this area had 70% of the SOX controls and 98% of the SOX claims were arising in this area. Second, in a highlighted section, the CFO had a director of operational risk management that did not perform operational risk management and was not prepared to conduct RCSAs. Third, the operational risk management staff was not meeting the regulatory-mandated focus, causing operational risk to be applied inconsistently and impending the ability to implement an overarching strategy for managing operational risk. The staff may not have had the appropriate skill set and was confused as to whether their position involved risk management or compliance, which represented a misalignment of job descriptions.

Mr. Wade, Mr. Carter, and Mr. Price participated in writing and presenting the Dallas report. Mr. Price drafted the report with input and comments from Mr. Wade and Mr. Carter. Mr. Wade complimented the draft and there were minimal changes. JX 294 is a recap of their observations of their trip to Dallas. The other two parts of the Dallas report were the NSO organization review (JX 295) and the risk management team overview. Mr. Wade indicated that the draft NSO review (JX 295) needed a lot of work. JX 301 indicates that Mr. Price made those changes. One of the changes Mr. Wade directed was that the focus be on the company's, rather than the regulator's, operational risk management program. JX 300, the final version, reflects that change, and says the execution model is not sufficient to successfully execute the company's operational risk management program. Mr. Price believes Mr. Wade suggested that Mr. Price read the draft out loud to better understand how it might be received. Mr. Carter helped Mr. Price draft JX 295, the foundational document. Mr. Carter also participated in the presentation to Mr. Edward by setting out the 90 day plan, for which he was responsible.

Later, Mr. Wade went on to a position in the operating plans unit, which was one of the important initiatives. Mr. Carter was also soon transferred to a vice president position.

JX 287 indicates the people who were designated to be spoken with as part of the Dallas report. On March 8, 2010, the team met with the risk management team, the servicer compliance team, the services compliance team, and the team leads. Mr. Wade lead the meetings and covered the designated agenda. Mr. Carter and Mr. Price took notes. The first three meetings involved information gathering. Mr. Price doesn't recall whether the fourth meeting involved sharing information.

OIT means operational incident tracking. At Fannie Mae, and operational incident means a control, or some business process, did not function as intended which caused an unintended consequence. For example, failure to timely open mail may cause an important legal deadline to be missed. Mr. Price believes everyone is trained to report operational incidents. The report should be made at a minimum to the person's manager. Mr. Price conducted that type of training in January 2010 for the Dallas organization.

The Federal Housing Finance Agency, FHFA, is both the regulator and conservator for Fannie Mae.

When Mr. Price highlighted in JX 100 that Mr. McGhee's claims and disbursement team was not being supported by an operational risk function, Mr. Price did not report that as an operational incident because it was an evaluation finding and not viewed as a operational incident and Mr. Wade didn't review the findings as operational incidents. Likewise, Mr. Price did not report the other highlighted findings as operational incidents. Mr. Price acknowledged that since the findings were not placed in the ACORD system, the SOX team did not have an opportunity to review them, which would preclude remediation if there were SOX implications. He also did not report the incidents in JX 100 to the Fannie Mae SOX team.

Many of the incidents in JX 100 involved people not being properly designated as operational risk, and people not having specific operational risk function supporting them. Unlike his work at Fannie Mae which involved operations, these people were there to provide operational risk expertise but were not doing so in the manner of Fannie Mae's five pillar operational risk programs. They also were using different, and unsanctioned, tools and didn't understand core operational risk concepts. They were not organized in an efficient framework.

Mr. Price analyzed Mr. Hurt's opinion about the risk function in Fannie Mae. However, his approach wasn't in accordance with Fannie Mae's framework and his root cause analysis was not based on statistics. He reached his conclusion between September 2009 and January 2010. Mr. Price acknowledged the company's framework doesn't require statistical analysis. Mr. Price verbally told Mr. Claude about his issue with Mr. Hurt not operating within the company's framework.

Mr. Price's present job is focused on Lean Six Sigma and not on risk. In Fannie Mae, operational risk professionals and Lean Six Sigma professionals have different titles.

In a January 6, 2010 email to Mr. Joe Bryant (JX 260), Mr. Price indicated that he informed Mr. Edwards that the NSO organization was going to end up in trouble due to Mr. Hurt. He sent the email in an effort to be transparent with Mr. Bryant. Mr. Price didn't copy Mr. Wade on the email. And, the email occurred before any personnel decisions had been made about Mr. Hurt. Mr. Price had his conversation with Mr. Edwards about Mr. Hurt before Mr. Edwards asked that the Dallas organization review be conducted. Mr. Wade and Mr. Price lobbied for Mr. Bryant to take the director of operational risk position in Dallas. He eventually took the position.

Although a February 7, 2010 email (JX 262) about the end-to-end RCSA to Mr. Edwards indicates that the teams had been briefed about remediation action times, Mr. Price was unaware that Mr. Hurt responded that he didn't know about a debrief or required remediation. Further, at about the same time, Mr. Price had only just sent the materials to Mr. Hurt by email (JX 263) and hadn't yet debriefed him.

On February 17, 2010, Mr. Patricia Fulcher sent an email (JX 264) to schedule a follow-up discussion to ensure the RCSA's findings will be incorporated into their overall risk management plans and what reporting and tracking needs to be accomplished at the enterprise level. Mr. Price did not mention Ms. Fulcher's efforts in the subsequent Dallas report. Her email reference to reporting and tracking did not suggest that she was going to follow the company's pillars.

In a February 18, 2010 email (JX 266), Mr. Edwards indicated to Mr. Wade and Mr. Price that if Mr. Hurt was not completely on board he would be removed. On February 26, 2010, Mr. Wade told Mr. Price that Mr. Hurt was going to be removed from his position (JX 274). A month or two later, he was removed. Mr. Wade also informed Mr. Price that Mr. Bryant was going to be leveraged to fill Mr. Hurt's position.

JX 258 is a list of documents that Mr. Price saved to his hard drive at Fannie Mae and summary of events Mr. Price prepared for litigation. One document, dated May 17, 2010 summarizes his conversation with Mr. Wade about his complaint and the different issues he raised and his concern about a black mark. The focus of that document was a race discrimination complaint. The document does not reference a concern about retaliation for the Dallas report.

When he referenced his maturity being question, Mr. Price was referring to Mr. Wade's observation that the mature thing to do was take Mr. Edwards to dinner and talk about his future opportunities. But Mr. Price did not think that was the right thing to do. However, JX 258 doesn't appear to reference this event. It does contain a reference to Mr. Edwards' observation about Mr. Price's maturity. After Mr. Price filed his complaint, Mr. Wade told him that Mr. Edwards did not think he was being mature. At the same time, the summary of the May 14, 2010 conference call with Mr. Wade does not mention Mr. Wade having a conversation with Mr. Edwards.

Mr. Price disagreed with Mr. Wade's comment on May 17, 2010 that if he would look at the job description he'd see that he wasn't qualified, which was contrary to what he had indicated before Mr. Price filed his complaint. Also in the memo about May 17, 2010, when discussing retaliation for conducting a study that highlighted that his organization was not in alignment with the regulator's approved framework, he didn't mention SEC regulations or any violations of any acts cited in SOX.

The document next chronicles that on May 18, 2010, Mr. Price indicated that he believed there was a systematic effort to discriminate again him because he is a minority. He didn't reference retaliation for the Dallas report.

Mr. Price never returned to Mr. Edwards to discuss what future roles he may have had in mind.

On March 29, 2010 Mr. Wade informed Mr. Price that Mr. Edwards had accepted the Dallas report. However, Mr. Price was aware that "we were moving forward with the recommendations immediately after we presented it" on March 22, 2010. While Mr. Edwards was overwhelmed, Mr. Price believed he accepted the Dallas report and its recommendations immediately after the March 22, 2010 meeting.

Subsequently, Mr. Wade, Mr. Carter, and Mr. Price briefed the FHFA regulator about the Dallas report. After the report, the internal and external stakeholders, including FHFA, were concerned about what was going on in Dallas.

Mr. Price did not provide JX 258, including his concerns as they related to the report to Congress (JX 420) to Mr. Wade or anyone in investigations.

In answer to an interrogatory on February 20, 2012 (JX 472, Interrogatory #3), when asked to identify his protected activity in terms of the exact language of any applicable SEC rule, on March 22, 2010, Mr. Price did not mention the claims and disbursement team not being supported by an operational risk function. However, he did reference it in response to the next interrogatory when questioned about the reasons for Mr. Edwards' denial of promotion.

When he made his complaint to investigations, Mr. Price did not include the documents he used to answer Interrogatory #3. On July 7, 2010, Mr. Price provided the other portions of the report (JX 45 and JX 46).

At the time of the Dallas report, the operational risk structure consisted of the operational risk strategy team as the hub responsible for working with the regulator in reference to the five pillars, with the directors of operational risk in business units being the spokes, with a dotted line of reporting to the hub. The senior vice president of that operational risk strategy team was Mr. Wade. However, a vice president of operational risk for the Dallas organization was warranted considering the scope and magnitude of the operation.

Based on her non-selection, Mr. Price agrees that Mr. Edwards was not able to steer the other interviewers to a consensus to hire Ms. Gray.

As posted, the vice president position recommended by the Dallas report would be a direct report to Mr. Edwards, with dotted-line reporting to Mr. Wade.

[Redirect examination] Mr. Price filed his complaint with HR Compliance and Ethics on May 13, 2010. Prior to that filing, Mr. Wade had told Mr. Price that he was qualified for the position and suggested that he apply. After the complaint was filed, Mr. Wade indicated that Mr. Price wasn't technically qualified for the position.

As the executive vice president and hiring manger, Mr. Edwards was the ultimate decision-maker concerning the vice president position.

[Re-cross examination] The ultimate decision maker after the rounds of interviews was the CEO, Mr. Mike Williams, who is above Mr. Edwards.

Mr. Jeffrey (Jeff) R. Hayward

(TR, pp. 236-248)

[Direct examination] Mr. Hayward works for Fannie Mae as vice president in charge of the multi-family business.

On April 23, 2010, Mr. Hayward met with Mr. Wade and Mr. Price for a briefing on the evaluation that they had conducted of the Dallas operational risk function (JX 327). Mr. Hayward had just taken his job as the head of NSO, which works with banks to collect money on behalf of Fannie Mae. He doesn't remember the specifics about the meeting. Mr. Hayward does recall that he was shell-shocked and as he left the meeting he thought there were a lot of issues and hoped they were being fixed. Mr. Price and Mr. Wade did not discuss what was going to be fixed.

[Cross examination] Mr. Hayward was promoted to his present position in January 2012. His direct supervisor is the CEO.

His meeting with Mr. Wade and Mr. Price took place within days of his arrival. Based on 25 years experience with Fannie Mae, Mr. Hayward would have expected Mr. Price and Mr. Wade to present how they were going to fix the identified issues, but they didn't. During the course of their conversation, no one said anything about SOX or potential SOX violations. He believes the purpose of the presentation was just to make him aware of the issues. He did not have an understanding that anything they presented was related to SOX or SEC rules, or even close to that. Had something related to an SEC rule, Fannie Mae has protocols for handling an SEC problem. They did not tell him there was an SEC issue.

When he was hired by Mr. Edwards, they only talked about mortgage services. They did not discuss operational issues. Mr. Edwards recruited Mr. Hayward based on his expertise and asked him to join the organization.

Mr. Joseph (Joe) N. Bryant
(TR, pp. 250-295)

[Direct examination] Mr. Bryant is the Director of Project Management in the Dallas office. He was first hired by Fannie Mae as the Director of Operational Risk in December 2009. In addition to a bachelor's degree in business administration and an MBA, he has a certification in Lean Six Sigma. Most of his professional training has been in the area of operational risk. In his current position, Mr. Bryant is responsible for the execution of the corporate operational risk program.

Typically, Mr. Bryant has dealt with SOX issues during RCSA exercises and operational training reporting. When managing operational risk, SOX controls and processes are within the risk review. Additionally, operational incidents may have SOX implications if there is a material weakness that could impact a financial statement. So, those incidents typically are reported in the corporate reporting system and that's how the SOX organization if notified.

During a RCSA, several types of controls are identified, relating to regulatory compliance, SOX, and operations. A control is an activity, function, or mechanism used to minimize a risk event. Controls are evaluated in terms of effectiveness and efficiency. Other teams, including compliance and ethics, internal audit, or SOX, may also use documentation for testing or sampling to controls to assess performance. Any deficiency in one of those controls would typically be reported. The RCSA playbook (JX 403) is typically consulted during the performance of a RCSA. Internal procedures are also utilized. A financial report is not produced after a RCSA. In Mr. Bryant's experience, a SOX weakness can occur when a control isn't being performed as designed.

When conducting a RCSA, Mr. Bryant might consult with the SOX subject matter expert because an operational control may also be a SOX control and they may not be evaluating the control from a financial reporting perspective. Those types of controls may represent up to 10% of the process. SOX is a subset of the overall risk assessment. If a SOX control is identified throughout, it's included in the operational risk process maps.

The April 2010 operational risk book for the credit loss management NSO (JX 461) identifies an operational risk incident, number 2036, which indicated that a third party received a $2 million check for setup fees in error and the funds were recovered. This incident occurred when a vendor who sells property on behalf of Fannie Mae called to report receiving a check for $2.3 million which was much higher than expected. They discovered that this one vendor had received the total amount due to all the vendors because of a spreadsheet calculation error. There was a failure in a pretty complicated process with one person running the process that was being overwhelmed by volume. At the time, they were not aware that it was SOX deficiency. But, the incident was recorded in the ACORD system, and the SOX team became aware that there was a financial impact. And, that was reported in the next SOX report as a SOX deficiency

(JX 414). Mr. Edwards would have seen the operational risk book report in April 2010. During this period, Mr. Edwards was also briefed monthly of any significant incident greater than $50,000.

In May 2010, Mr. Bryant attended a meeting in the Dallas with FHFA which introduced the FHFA visitors to the leadership team of the credit organization. They were also given a walk-through of the operational risk process. It was a very important meeting. In addition to Mr. Edwards, Ms. Fulcher, and other leadership members, Ms. Kendra Gray was also present. Mr. Edwards introduced Ms. Gray as a candidate for the vice president of operational risk. Surprised by the introduction, Mr. Bryant looked at Ms. Fulcher because that was the first time he had heard about the interview process for the vice president position. Mr. Bryant introduced himself to Ms. Gray but he didn't know if she was going to be his new boss. He offered to set up a meeting with her. However, the meeting didn't occur because Ms. Gray had to leave Dallas.

In March 2010, as part of his duties, Mr. Rich McGhee was responsible for part of the business which had SOX controls.

[Cross examination] There are elements of operational risk that have no SOX connection.

If an operational risk expert discovered an operational incident, he was suppose to immediately identify and document the issue, and get it reported into the ACORD system. This is a requirement; it's part of a person's responsibility.

Upon review of the Dallas report summary issued to Mr. Edwards, Mr. Bryant did not believe there were any SOX implications. If there had been SOX implications, he would have expected them to be specifically spelled out.

Mr. Terence (Terry) Edwards

(TR, pp. 476-553)

[Direct examination] Mr. Edwards is currently the executive vice president for credit loss mitigation.

In March 2010, Mr. Edwards asked Mr. Wade and his team to evaluate the Dallas operational risk team. On March 22, 2010, Mr. Wade's team presented the results of their review. One of the recommendations was the creation of a vice president of operation risk position. A few weeks later, sometime in April, at his suggestion, HAMP responsibilities were added to the vice president position description. He had already had Ms. Kendra Gray in mind who had HAMP experience, and believed it would be more efficient to have one person do both roles.

On May 12, 2010, Mr. Edwards had a "father-son chat" with Mr. Price.

During the investigation interview on May 24, 2010, Mr. Edwards stated that in regards to Mr. Price's complaint, "the guy's brains fell out."

After the new vice president position was announced, Mr. Edwards invited Ms. Gray to attend a FHFA meeting in Dallas. He want Ms. Gray to understand what she would be getting into because traveling to Dallas all the time "is not fun." During those meetings, the head of Fannie Mae Compliance and Ethics asked Ms. Gray to leave the meetings because he didn't believe it was proper for her to be there in light of her HAMP responsibilities.

Mr. Price's complaint that he filed with Fannie Mae made Mr. Edwards angry. He found it offensive and was hurt because Mr. Price did not consider their May 12, 2010 conversation to be a father-son chat.

After all the candidates were interviewed, they met with an HR representative and had a final telephonic meeting during which they evaluated the candidates. Although he was in Ms. Chris Wolf's office during the conference call, Mr. Edwards recused himself and did not offer any opinions or evaluations.

Mr. Edwards did not reach out to other interviewers to let him or her know of his preference. "At some point," he may have said that he thought Ms. Gray was the best candidate. But, he did not tell Mr. Neill his preference before the meeting. Mr. Edwards "did not influence Ed's decision or Ed's contribution in that meeting in any way, shape, or form." He doesn't recall whether he talked to Mr. Neill after the meeting about his preference.

After the interviewers' meeting, Mr. Edwards talked with Ms. Chris Wolf, the head of Fannie Mae HR, and decided that none of the candidates were qualified and Fannie Mae should look externally. However, that determination was "essentially concluded before "we hung up with everyone, before the meeting ended." The decision had been "concluded." The team had concluded "we're going to look outside." "We made that decision on the phone with all."

During the interviewers' discussion, Mr. Edwards did not weigh in on who should be selected. "At the end of the day, Ed Neill said, I think we should look outside." More specifically, each interviewer had ranked all the candidates one to five. "After that was done, and there was some discussion about who was the top candidate. Ed then threw out there, 'I don't think anyone has enough experience in the RCSA space, I think we should look outside.' And, the team quickly concluded that we'll look outside." And that was the conclusion of the meeting.

As the hiring manager, Mr. Edwards had the authority to reject the team's consensus. But, he supported the decision that the team made. Mr. Wade would also have a say in the decision.

Mr. Edwards and Ms. Fulcher talked about Mr. Price's fitness for the vice president's position. But, he doesn't remember the discussion.

Mr. Rusty Johnson was a former Fannie Mae employee who worked in the Dallas "space." In September 2009, before leaving a few months later, Mr. Johnson had a few people working in loss mitigation. In late 2009, Mr. Price performed a RCSA for Mr. Johnson's loss mitigation team. The RCSA related to the delegations of authority exception management process.

Mr. Edwards recognizes JX 420 as the FHFA's annual report to Congress.

It is possible that an operational incident can result in a SOX deficiency.

[Cross examination] The FHFA report, JX 420 (Bates stamp 001022), indicates "there's more work to be done" and management expected completion by 2010.

In his meeting concerning the Dallas report from Mr. Price, Mr. Wade, and Mr. Carter, they discussed having a person who would play a key role in helping the organization meet the management's goals set out in the FHFA report.

Mr. Edwards reached out to Mr. Wade, and asked for an evaluation of the Dallas organization. Its purpose was to make sure the Dallas organization and its structure was linking up with the national organization. It appeared that Mr. Hurt wasn't getting onboard with the Fannie Mae methodology. Mr. Edwards was concerned about whether the 12 people Mr. Hurt had hired mirrored Mr. Hurt and his approach. So the primary objective of the study was to assess whether Mr. Hurt's organization had good people. The Dallas report indicated the 12 individuals were viable and could continue in their roles. However, Mr. Wade and his team identified issues with Mr. Hurt. As a result, Mr. Edwards and Ms. Fulcher worked with him, but eventually recognized that Mr. Hurt was not the best hire.

Mr. Edwards was aware that Mr. Price conducted the RCSA, and his work had a positive effect on Mr. Edwards. Since Mr. Price knew the operation, Mr. Edwards assumed Mr. Price would assist Mr. Wade with the Dallas report.

When Mr. Edwards arrived in September 2009, 2,000 people were working in the credit loss operation and his number one priority was to mitigate credit losses at the start of the housing crisis. Although he possessed a good operational and process background, Mr. Edwards did not come from a company that had massive losses. As he attempted to address this issue in his first six months, Mr. Edwards was not aware of all the issues in the Dallas organization, including issues related to operational incidents.

Mr. Edwards had been working for a few months at Fannie Mae when Mr. Hurt arrived.

When he arrived, Mr. Edwards was able to bring Mr. Jeff Hayward over to his team without posting the job or a competitive process. Similarly, Mr. Edwards also had Ms. Gwen Muse Evans join his team as chief risk officer based on a recommendation from the Fannie Mae chief risk officer. When the position of vice president of operational risk was first suggested on March 22, 2010, Mr. Edwards did not know that it would be a posted position. During initial conversations with Mr. Wade about the new vice president position, Mr. Edwards gained Mr. Wade's approval for recruiting Ms. Gray for the position. Mr. Edwards became aware that the vice president position would have to be posted from Ms. Wolf only after he had focused on Ms. Gray. The position had to be posted because Ms. Gray was in a director position and the vice president position would be a promotion. Previously, Mr. Edwards had been the CEO of a private company and moved people around at will to solve business problems. "Not everything got posted."

Mr. Edwards could not have rejected the decision of the interviewers for the vice president of operational risk because Mr. Wade and Mr. Edwards were jointly hiring and if Mr. Wade didn't agree, Mr. Mike Williams, the CEO, would not approve the hire.

At the time, Mr. Edwards was not thinking whether the vice president position needed to be posted. Instead, he was thinking about how to move forward and get the position filled as quickly as possible.

Since many people traveled from DC to Dallas, Mr. Edward got to know Mr. Price both in business, and on a casual basis through occasional dinners and a shared car ride.

On May 12, 2010, Mr. Farley "came rolling into my office" and they started talking. Mr. Price expressed enthusiasm for the vice president job. At that time, Mr. Edwards was thinking about his prior discussions with Mr. Wade, his plan to include a HAMP role in the position, and his conclusion that Mr. Price is not in position to get the job since Mr. Wade had indicated Mr. Price was not right for the job. So, in light of Mr. Price's youthful enthusiasm, Mr. Edwards tried to have a "father-son chat" to let him down without bruising his ego. Mr. Edwards told Mr. Price that HAMP was going to be included and there's a better candidate who will get the position because of HAMP experience. Mr. Edwards did not call Mr. Price into his office. After the conversation, Mr. Price thanked him for his honesty.

A week or two later, Ms. Wolf informed Mr. Edwards that Mr. Price had filed a complaint about the process being unfair. Consequently, Mr. Edwards intended to run a fair process and recuse himself and let the interview panel select the candidate for the position. As far as Mr. Edwards knew, the basis for the complaint was unfairness.

On March 22, 2010, when Mr. Wade, Mr. Carter, and Mr. Price made their presentation, Ms. Pat Fulcher was also present. Their written report consisted of recommendations. Mr. Edwards does not remember looking at the email from Mr. Price to Ms. Fulcher about the preliminary report on March 11, 2010.

Mr. Edwards was "mostly happy" about the March 22, 2010 report because he didn't have to let 12 people go. His other reaction is that some work needed to be done in the area and one of the ways to get that job done was to "quickly" fill the new position. Mr. Edwards did not state during the meeting that he was overwhelmed by the report. He didn't verbally express his reactions. Mr. Edwards accepted the findings and recommendations in the report. And, he worked with Ms. Fulcher to accomplish the attached 90-day plan. The plan was completed although not within 90 days. But consistent with the promise to FHFA, the plan was done by the end of 2010.

Mr. Edwards believed the team of Mr. Wade, Mr. Carter, and Mr. Price wrote the report. They all went to Dallas. He viewed it as an collective effort. At the March 22, 2010 meeting, they walked through the NSO operational risk management organizational structure recommendation, JX 100, p. 302. During their discussion about this topic, he became aware that someone outside his space was responsible for the area. This topic was in the report because it's located in Dallas. He was not aware of any remediation effort and no one from the team indicated that the topic had SOX implications. No one identified the topic as an operational incident. The reference to Ms. Topper's functions was just an informational point. Mr. Edwards doesn't recall anything being said during the meeting about: regulator's expectations for operational risk management staff not being met; inconsistent application of operational risk management; inappropriate staff skill set; and, staff confusion. None of these issues was noted to have involved an operational incident. Mr. Edwards did not have any understanding that the report had SOX implications. SOX requires controls so there are not any errors in financial statements which might mislead public investors. Nothing in the Dallas report led Mr. Edwards to believe there were SOX implications. The operational risk space is completely separate from the SOX controls space. Had Mr. Wade or his team believed there were potential SOX issues in the report, Mr. Edwards would have expected them to say so at the meeting. He does not know if any member of the team reported their findings to the Fannie Mae SOX team. None of the findings in the Dallas report were reported as operational incidents.

When Mr. Edwards made his statement about Mr. Price's brain, he was unaware of the basis for his complaint. At that time, no one had informed him there were SOX implications or that Mr. Price had engaged in a protected activity.

Mr. Edwards believes his father-son chat with Mr. Price was an appropriate, informal, management-style conversation. If everyone is considered to be a family member, personnel decisions will be rational. Mr. Edwards tries to create an environment where he is a trusted leader who will be followed. He tries to do the right thing. Mr. Edwards now realizes that "Fannie Mae is just a different place," and changing its culture will take "a long, long time."

Mr. Edwards doesn't recall the specific words that Mr. Wade said about Mr. Price's qualifications but the impression he came away was that Mr. Price was not ready. Because he had that notion in his mind, Mr. Edwards looked to recruit Ms. Gray. Based on Mr. Price's background, "Farley would have been a viable candidate if Claude had not said he was not to me." To Mr. Edwards, the idea that Mr. Price was not ready would have been equal to "maturity." Prior to the March 22, 2010 meeting, Mr. Edwards did not have any discussion with Mr. Wade about Mr. Price's maturity.

Mr. Edwards doesn't recall Ms. Fulcher interrupting the presentation with an observation that Mr. Price should take the vice president position.

The HAMP component was added weeks later when they were trying to figure out someone for the position. HAMP was within his business unit. Adding it to the new position represented a cost savings. Since HAMP's customer is the U.S. Treasury Department, it's isolated and a limited number of people work in the HAMP space due to conflict of interest. Mr. Wade approved the combination of responsibilities for the new position.

After the March 2010 meeting, Mr. Wade moved from operational risk to work with the operating plan group. The operating plan was an effort to reinvent Fannie Mae, and focus on taking out costs and improving operational efficiency. Mr. Edwards did not have any input in Mr. Wade's job change. After the Dallas report, Mr. Carter was promoted to vice president. While supportive of Mr. Carter, Mr. Edwards did not have any role in that promotion.

[ALJ examination] Fannie Mae is a private company in the sense that it has shareholders, but it has a more rigid structure with compliance and ethics departments, and as a government sponsored enterprise it is supervised by a federal regulator, FHFA. The federal government is one of the stake holders.

When Mr. Edwards arrived, he just showed up and did not receive any orientation to Fannie Mae.

Some where between March 22 and May 12, 2010, Ms. Wolf advised Mr. Edwards that the vice president position would be a competitive positing. Prior to that information, Mr. Edwards had already zeroed in on Ms. Gray because they didn't have any other candidates. Mr. Wade had not brought any candidates forward for the position that was going to report to Mr. Edwards and Mr. Wade.

When Ms. Wolfe told Mr. Edwards that the position would be completive, he did not change his mind about Ms. Gray; that she was the best person for the job. Ms. Wolfe explained the process that would take place. Mr. Wade also had selected Ms. Gray.

Mr. Edwards believes Mr. Price would have considered him to be a father figure due to Mr. Edwards' age and experience. Mr. Price was excited and enthusiastic about getting the job and Mr. Edwards tried to let him down easy. Mr. Edwards doesn't recall whether he told Mr. Price that Ms. Gray was the person with better experience. He doesn't recall whether Mr. Price said that he would apply anyway.

Mr. Edwards made the comment about Mr. Price's brain in part because he was in an investigation environment and had never been investigated. When asked why Mr. Price would have made the complaint, he made the statement because Mr. Price's action wasn't logical. Obviously, from Mr. Price's standpoint, it wasn't a father-son chat.

Mr. Edwards asked for the Dallas report because he was concerned whether he had the right people in place; if not he'd have to fire these people. It went beyond just one individual. The report indicated that while work needed to be done, Mr. Edwards would not have to let the 12 individuals go. Consequently, he needed to fill the new vice president position quickly. Since he had only been in his new job four to five months, Mr. Edwards believed that whatever the Dallas report found, he didn't cause it. He was called in to fix things. He was not angered by the report.

Mr. Edwards was not angry with Mr. Price for filing the initial complaint. However, the last thing he needed in his busy schedule was an investigation.

Ms. Gray was Mr. Wade's top pick. Mr. Edwards doesn't recall whether any interviewer selected Mr. Price as the top candidate. Mr. Ed Neill was the interviewer who suggested they go outside to find a candidate because none of the internal candidate competing for the job had the requisite 10 to 15 years of operational risk experience. The internal candidates were permitted to interview even though they did not have the necessary experience. The position was never filled because they couldn't find a candidate. Mr. Edwards, Mr. Wade, and others interviewed external candidates, but "none of them were people we would hire that Joe Bryant could look up to and say, hey I can learn from this person." It also turned out that not many people have 10 to 15 years in the RCSA risk discipline. The requirement turned out not to be a viable filter. Rather than remove the experience requirement, they decided to have the chief risk officer, Ms. Gwen Muse Evans, take on the role, which did not require a competitive process. That change was to keep FHFA happy, while they could groom Mr. Joe Bryant to take the position. Eventually, however, Fannie Mae went in a different direction.

[Re-direct examination] After the May 12th conversation with Mr. Price, Mr. Edwards never followed up concerning other opportunities for him at Fannie Mae. At the end of their conversation, rather than a handshake, Mr. Edwards extended his fist.

Ms. Jill Oliver was a candidate for the vice president position. He never followed up with Ms. Oliver about other opportunities at Fannie Mae.

[Re-cross examination] JX 142 contains a string of emails, including an April 30, 2010 email from Mr. Edwards to Mr. Wade indicated that he was thinking about putting HAMP into the scope of the vice president position, especially if they go with Ms. Gray. Mr. Wade responded that he was absolutely good with the idea. Mr. Wade added that combining the operational risk oversight under a single vice president for operational risk would make everyone's life easier. Based on that email exchange, Mr. Edwards believed Mr. Wade was totally supportive.

Mr. Edwin (Ed) B. Neill
(TR, pp. 554-584)

[Direct examination] Mr. Neill is the senior vice president for credit loss management.

In 2010, operational risk in the Dallas platform needed a high level of focus due to the high volume of foreclosures and the legacy technology that was not prepared to handle that volume.

Mr. Edwards expressed his belief that Ms. Kendra Gray was more qualified than the other candidates being considered.

Mr. Neill reports directly to Mr. Edwards.

During his interview with Ms. Gray, Mr. Neill gave her a hypothetical situation which addressed her willingness to give Mr. Edwards bad news and provide candid feedback on issues in the Dallas office. He thought her response was troubling because it wasn't consistent with what he would have expected from a person charged with the role in the organization. In particular, one of the key characteristics for the new vice president position was the ability to "call serious issues" when they are identified. Mr. Wade was present during this interview and Mr. Neill shared his concern with Mr. Wade about her willingness to confront issues head-on.

Based on several questions during his interview with Mr. Price, Mr. Neill had concerns about his maturity. Additionally, during a group dinner in Dallas, Mr. Price told a story that Mr. Neill considered to be unprofessional.

Customarily, Mr. Neill does not fill out written evaluation forms, and he did not do so for the vice president interviews. During a conference call with the other interviewers, Mr. Neill expressed a concern with all the internal candidates and suggested that an external search would be beneficial.

FHFA ultimately determined that centralization of the operational risk function was the way to lower operational risk and mandated Fannie Mae pursue a different organizational structure than having the vice president position in Dallas.

[Cross examination] Mr. Neill was selected as an interviewer because he was responsible for several areas of the department that would be covered by the new vice president position and he would have to work with the person who was hired as the vice president of operational risk.

As a leader in his organization, it's Mr. Neill's responsibility to bring bad news to Mr. Edwards; he has oftentimes done so. Mr. Edwards is intense but not intimidating. He can be frustrated with bad news but he appears to value and appreciate being informed. When Mr. Neill has brought a problem to Mr. Edwards, he also suggested a solution. If Mr. Edwards believes the suggestion is good, he'll think about implementing it. Otherwise, Mr. Edwards will make a modification or give other guidance if he disagrees with the proposed solution.

One of the performance rating factors considered for officers in their business is whether the individual is not afraid to bring forward difficult issues, and does so with proposed solutions. It's a valued characteristic.

The company was looking at internal candidates for the purpose of career development of talented individuals. Often times, as a stretch opportunity, people are allowed to apply and be interviewed for a position that requires a higher level of ability and performance than they may possess. However, Mr. Neill's experience indicates that unless the applicant meets the position qualifications, the person will have an "even more difficult" time demonstrating the capability to handle the role. There is a reason the position has qualifications.

In light of the operational risk issues associated with the higher volume of business, Mr. Neill viewed the vice president for operational risk to the credit portfolio management area to be a "very, very demanding position" and quite a challenge. Mr. Neill did not find the interviewed candidates to be qualified. That's why he suggested an external search.

Ms. Wolf ran the interviewers' conference call. In addition to the recruiter and Mr. Neill, Mr. Wade, Mr. McGhee, and others participated. Ms. Wolf asked each interviewer their views on the candidates by ranking them and then giving overall feedback. Mr. Neill's turn came near the end after several interviewers had ranked the candidates. When it was his turn, Mr. Neill stated the he was not comfortable with any of the internal candidates and suggested the interview process be expanded outside of Fannie Mae. After those remarks, and some discussion, the interviewers reached a consensus that it was a good approach.

Prior to the interview, Mr. Neill reviewed the job description and the candidates' resumes. Due to the operational risk activity that had been on-going, and issues and operational incidents highlighted at his weekly staff meetings which had occurred regularly since February 2009, Mr. Neill was familiar with the role for the new vice president.

Mr. Neill was aware of the performance issue with Mr. John Hurt's NSO team. However, during the interview process, including the conference call with the interviewers, Mr. Neill was not aware that Mr. Edwards had requested an evaluation of that organization or that a report was prepared. He was also unaware of any complaint regarding the new vice president position. Mr. Neill was unaware of any operational incident in the NSO operational risk management organization. He was not made aware of any SOX issues in the NSO organization.

Mr. Neill can't recall when Mr. Edwards advised him of his evaluation of Ms. Gray's qualifications, but he assumes it likely occurred before the conference call. His opinion did not affect Mr. Neill's interviews of the candidates and his assessment of the candidates. Eventually, he actually disagreed with Mr. Edwards' assessment of Ms. Gray's qualifications.

Ms. Patricia (Pat) D. Fulcher
(TR, pp. 592-631)

[Direct examination] Ms. Fulcher is the vice president of the servicing business transformation office.

Ms. Fulcher was present on March 22, 2010 when Mr. Wade, Mr. Carter, and Mr. Price presented a report on the Dallas risk organization to Mr. Edwards. Mr. Wade opened the meeting with a recap of the team's task and then Mr. Price presented the contents of the report.

After Mr. Carter and Mr. Price left, Mr. Edwards and Mr. Wade had a conversation about the vice president position. Mr. Edwards asked if Mr. Wade had any ideas. Mr. Wade responded "Farley." When Mr. Edwards asked if he was ready, Mr. Wade replied yes and they should talk about it.

Mr. Hurt left Fannie Mae due to performance issues. He held a certain belief how the organization should run which was not consistent with Fannie Mae's approach. Mr. Hurt was adamant and uncompromising about his view. Due to his inflexibility about his approach versus the corporate framework, he had primary responsibility for the conflict with Mr. Price.

[Cross examination] The purpose of the March 22, 2010 meeting was to present the findings of Mr. Wade's team about the gaps between the present position of the organization and where they needed to go. She saw a preview of the report on March 11, 2010 in an email that Mr. Price sent her. The briefing Mr. Price mentioned for the next day never happened. She did not have any discussion about it with anyone.

Ms. Fulcher arranged a meeting following the end-to-end RCSA in February 2010 to ensure coordination and understanding about the report. Mr. Edwards asked the chief financial officer for the credit organization be included in the meeting.

Ms. Fulcher moved from a director position into her role for responsibility for the operational risk team in January or February of 2010 during an organizational change in the NSO. In April 2010, she was promoted to vice president. It was an in-place promotion which involved executive level interviews.

Through an introduction by a friend, Ms. Fulcher meet Mr. Price. She was familiar with his work because he had previously conducted RCSA for servicing in 2009.

At the March 22, 2010 meeting, Mr. Carter spoke about the 90-day plan. Ms. Fulcher doesn't recall thinking Mr. Price would be the appropriate person for the vice president job and she doesn't recall interrupting Mr. Price to say that. The introduction of the vice president position was an unexpected part of the report.

The report had been requested because the organization wasn't meeting standards. Fannie Mae had rolled out an enterprise risk framework that was a new process for her organization which had different levels of maturity in standing up the new process. They had heard feedback that the organization was not following the prescribed framework. They were managing risk but not necessarily by the new framework. Ms. Fulcher was coming over to take responsibility for the process, and Mr. Hurt had hired new people for the operational function in Dallas. She and Mr. Edwards discussed the situation, were concerned about the talent of the new hires, decided they needed to know where they were, and asked Mr. Wade's enterprise operational risk team to conduct an assessment to identify areas of departure from the defined framework. They expected to receive an understanding of the gaps in their program, identification of mismatches in talents and responsibilities, and recommendations for actions.

From her perspective, everything in the report was doable. Overall, the team had the right skills to do the job, which is what they wanted to hear. Some titles needed adjustment and Mr. Wade's team laid out a 90-day plan to implement operational rick incident training and take other actions to comply with prescribed practices. Ms. Fulcher was given responsibility for completing the 90-day plan and she received assistance from Mr. Carter and had discussions about borderline operational incidents. During the implementation of the plan, she raised several operational incidents. The plan was competed within the established time frame.

After reading the Dallas report and hearing the March 22, 2010 briefing, Ms. Fulcher did not understand that the issues in the report would have financial implications. The Dallas report did not identify any operational incident, financial implications, SEC rule implication, or SOX implication.

The post-meeting conversation between Mr. Edwards and Mr. Wade on March 22, 2010 was very casual. After Mr. Wade mentioned Mr. Price, and indicated they should talk about it, Mr. Wade added that he might have some other ideas. Ms. Fulcher's interpretation was that it was not a ringing endorsement. After Mr. Wade left, Mr. Edwards and Ms. Fulcher discussed the report and he told her that she had the responsibility to implement the recommendations. He also asked her about Mr. Wade's idea and Ms. Fulcher responded that she wasn't sure. In a later conversation, Ms. Fulcher again told Mr. Edwards that she wasn't sure about Mr. Price as a candidate and that he wasn't their guy. She was concerned because at that point, Ms. Fulcher didn't know actually what had transpired between Mr. Hurt and Mr. Price; it was a conflict that seemed unresolved. Additionally, while Mr. Price's servicing RCSA had been a very high-level report, it wasn't actionable and didn't provide any direction. So, if they were looking for the vice president to run and lead their program, she wanted to make sure that person would provide useable feedback.

During her interview with investigators, Ms. Fulcher became aware there had been a complaint about fairness concerning the vice president promotion because the process for hiring had not been followed.

During the March 22, 2010 meeting, Ms. Fulcher doesn't recall Mr. Edwards saying that he was overwhelmed. He did appear "a little bit" distracted during the meeting.

After the March 22, 2010 presentation, Mr. Edwards and Ms. Fulcher never talked about the report again. She just provided status and completion reports on the 90-day plan.

Ms. Fulcher believes the interview process did not produce an acceptable candidate, so an external process commenced. Ms. Fulcher interviewed a few of the external candidates. But none of the external candidates were a good fit. So, Ms. Muse Evans was given oversight responsibility for the operational risk program. She also hired a director of compliance.

Ms. Wendy Fischman
(TR, pp. 640-711)

[Direct examination] Prior to leaving Fannie Mae in November 2011, Ms. Fischman was an investigator with responsibility to investigate allegations of violations of the company's conduct of conduct and policies.

Ms. Fischman was assigned to investigate Mr. Price's complaint. She was assisted by Mr. Walter Kindred, who was the Director of Investigations, and conferred with Ms. Leslie Arrington, the vice president/managing director for investigations, fraud, and privacy. During the course of her interviews, Ms. Fischman took notes.

In Mr. Wade's May 18, 2010 interview (JX 119), he indicated that he told Mr. Edwards that Mr. Price was best equipped to get the vice president position up and running the fastest. He indicated that while Mr. Price did not have risk management experience having been on the team for only one year, Mr. Wade would continue to coach him. Mr. Wade told Mr. Edwards that Mr. Price was ready for the job but Mr. Edwards should talk to Mr. Price and let the process work itself out.

Mr. Wade speculated that Mr. Edwards had reversed engineered the vice president position to fit Ms. Gray.

Mr. Wade reported that in a conversation with Mr. Richard McGhee a week prior the May 2010 interview, Mr. McGhee twice asked when Ms. Gray would start in the new vice president position.

After the interview, Ms. Fischman sent an email to Ms. Arrington noting the testimonial dispute between Mr. Edwards and Mr. Wade about whether Mr. Price was ready for the vice president position (JX 102).

After interviewing Mr. Edwards and Ms. Fulcher, Ms. Fischman asked Mr. Wade additional questions because of the inconsistencies in their recollections (JX 112). Mr. Wade believed Ms. Fulcher was in the room when he said Mr. Price was ready.

In Ms. Fulcher's interview (JX 114), she indicated that Mr. Wade recommended Mr. Price but also said maybe someone else and he needed to think. Ms. Fulcher also noted that Mr. Wade told Mr. Edwards that Mr. Farley was ready for the position. She believed Mr. Wade did not have any reservations.

During a subsequent interview (JX 113), Ms. Fulcher added that in an earlier discussion about Mr. Joe Bryant replacing Mr. John Hurt, Mr. Price's name had not been mentioned. During the March 22, 2010 discussion, Mr. Bryant's name was not mentioned.

In Ms. Wolf's interview (JX 108), she opined that it was inappropriate for Mr. Edwards to invite Ms. Gray to the Dallas meetings with the FHFA. Mr. Wade also told Ms. Wolf that Mr. Price was qualified.

In a May 18, 2010 telephonic notification of the investigation to Mr. Edwards (JX 120), he indicated that when he asked Mr. Wade if Mr. Price would be good for the new vice president job, Mr. Wade had said no. Mr. Edwards did not indicate when that exchange occurred. During the subsequent interview (JX 116), she counseled him when he made the comment about Mr. Price's brains. Mr. Edwards was contrite and tried to explain the context. Ms. Fischman didn't write down his specific explanation.

A second interview of Mr. Edwards was conducted by Ms. Arrington and Ms. Nancy Jardini (JX 107).

In her December 2010 investigative decision, Ms. Fischman concluded Mr. Edwards inaccurately contended what Mr. Wade said about Mr. Price's candidacy (JX 138). At the same time, Ms. Fischman concluded Mr. Wade's support was not unconditional because Mr. Wade advised that while he believed Mr. Price was ready for a vice president position and he could get the group up and running the fastest, he also expressed some reservations about Mr. Price's credentials with respect to risk management and his inexperience in that area. Mr. Wade indicated that he informed Mr. Edwards of those reservations during the same conversation that followed the Dallas report.

Based on her review of the witnesses' statements, Ms. Fischman found it reasonable that Mr. Edwards came away from the conversation with the impression that Mr. Wade, who had been Mr. Price's indirect supervisor and mentor, did not unconditionally support Mr. Price. So, in her mind, Mr. Edwards was wrong indicating Mr. Wade did not support the candidacy, it just wasn't a "rousing endorsement." Yet, if Mr. Edwards was relying on Mr. Wade's judgment, and he didn't hear a very enthusiastic endorsement, it was not unreasonable for Mr. Edwards, "right or wrong," to walk away with the impression that Mr. Wade did not support him.

The investigative report concluded Mr. Edwards did not handle the hiring process properly but his conduct did not rise to the level of a violation. They didn't conclude that he had done something wrong or misrepresented the truth. The conclusion about the actual exchange between Mr. Edwards and Mr. Wade was that Mr. Edwards was incorrect. At the same time, if Mr. Edwards had reached a conclusion that Mr. Wade did not support Mr. Price's candidacy unconditionally that conclusion would have been accurate. Ms. Fischman didn't clarity with Mr. Edwards whether his statement about Mr. Wade's support was a verbatim recollection or whether it was his impression.

Ms. Melissa Werner was the recruiter for the vice president position. In her May 17, 2010 interview (JX 121), Ms. Werner indicated that when she talked to Mr. Price on May 13, 2010, she advised him that she had heard Mr. Price already had a conversation with Mr. Edwards and that he might no longer be interviewing for the vice president position. She sent an email about that situation to Ms. Arrington (JX 101). Ms. Fischman then interviewed Ms. Keishe Crutcher on May 18, 2010 (JX 118), who indicated that while she was trying to schedule interviews, Mr. Edwards' assistant indicated that Mr. Edwards already had an interview with Mr. Price about the position and Mr. Edwards said he had somebody else in mind for the position.

[Cross examination] In the investigation report, they did not reach a conclusion that Mr. Edwards had misrepresented Mr. Wade's point. However, they concluded that the consistent recollections of Mr. Wade and Ms. Fulcher were more credible than Mr. Edwards' initial statement that Mr. Wade indicated Mr. Price was not good for the position.

When Ms. Fischman said risk management experience, she meant operational risk management.

Again, Ms. Fishman's interview notes reflect that Mr. Wade told Mr. Edwards that Mr. Price was the person best equipped to get the vice president position up and running because he had just completed the Dallas report. But, Mr. Wade also said that Mr. Price did not have operational risk management experience and had only been on Mr. Wade's team for a year. And, Mr. Wade would continue to coach him. When Mr. Edwards asked if Mr. Price was ready, Mr. Wade responded that he was ready but Mr. Edwards should talk to him and let the process work itself out and there were other people he might want to consider for the position.

Ms. Fischman believes Mr. Wade's reference to readiness meant Mr. Price was ready for a generic vice president position.

Mr. Wade indicated that Mr. Edwards was very receptive to the Dallas report and stated that the report was beneficial to him in framing issues for FHFA, Fannie Mae's regulator and conservator, because it showed they had proactively identified areas of weakness and developed a mitigation plan.

Mr. Price presented two primary complaints. First, he believed the manner in which Mr. Edwards conducted the hiring process for the vice president position was retaliatory for the Dallas report findings which identified weaknesses in Mr. Edwards' organization that required remediation. Specifically, Mr. Edwards retaliated by discouraging Mr. Price from applying, or continuing to pursue his candidacy, for the vice president position. Second, Mr. Price raised a race discrimination allegation, but quickly acknowledged he didn't have any real basis for the allegation. After he retained counsel, Mr. Price presented additional allegations.

During her initial interviews with Mr. Price, he never asserted that he was being retaliated against for any SOX violations. He never gave any indication that he thought the Dallas study implicated SOX concerns. Several months later, after he retained counsel, Mr. Price claimed that he had been retaliated against due to raising some SOX concerns.

JX 100 is Mr. Price's initial complaint which initiated the investigation. JX 47 contains the additional allegations Mr. Price submitted through counsel on June 16, 2010.

In July 2010, after Ms. Fischman had a meeting with Mr. Price and his counsel, Mr. Price realized that he had not sent to her all the parts of the Dallas study, so he provided the attachment by email (JX 45).

After receiving the additional allegations, Ms. Fischman interviewed Mr. Price about his SOX concerns on July 7, 2010 (JX 104), and tried to get him to articulate the foundation for his belief that he had raised SOX concerns in the study. When Mr. Fischman asked about SEC violations, Mr. Price referred to inadequate people, process, and internal controls. He noted there was an inadequate structure to manage operational risk so naturally a SOX violation is likely to occur. According to Mr. Price, SOX was a subset of operational risk. He also advised that after the study an operational incident did occur. Nevertheless, Mr. Price did not articulate any actual SOX violation, any actual violation of SEC rules, or any actual violation of securities law. Instead, he was dissatisfied with a portion of Mr. Edwards' organization's general process that was in place. And, that if a hypothetical SOX issue occurred they were not adequately positioned to address it. Mr. Price did not indicate that he was aware of any fraud against the shareholders. Mr. Price also acknowledged that Mr. Edwards told Mr. Price that the Dallas report was a "good study."

[Redirect examination] During the interview, Mr. Price also stated that when he presented the study he thought the Dallas operation had inadequate controls.

Mr. Gerald (Gerry) L. Thorpe
(TR, pp. 713-776)

[Direct examination] Mr. Thorpe has a BSBA and MBA. He is also a CPA. Starting in 2003, and through 2009, Mr. Thorpe provided SOX consulting services. In 2010, he served as a senior director of internal audit and shortly thereafter started his own consulting company.[7]

Mr. Thorpe's consulting experience has been in the area of business processes, addressing various risks associated with those processes, assisting in the design of effective controls. Mr. Thorpe has not been involved in the process of setting up operational risk management teams.

Mr. Thorpe was asked by Mr. Price to offer an opinion on whether internal control over financial reporting is inherently linked to operational business processes; the extent to which operational risk team may be relied upon by the SOX program at Fannie Mae; and whether people who perform operational risk assessments must meet a certain minimum experience and qualification standards.

In preparing his report, Mr. Thorpe relied upon documents provided by Mr. Price and his counsel and independent research of publically available documents, including SOX, Fannie Mae's 2010 10-K SEC filing requirements, auditing standards, COSO (Committee of Sponsoring Organizations of the Treadway Commission)[8] framework (a recognized process to design and evaluate internal controls), and the FHFA supervisor's handbook.

In his opinion, based on the COSO framework, one of the expectations of internal controls is to improve the effectiveness and efficiency of operations, the reliability of reporting, and compliance with applicable laws and regulations.

The auditing standard requires an auditor to have sufficient understandings of the points in the process where misstatements may occur in order to identify which internal controls to evaluate.

Based on these two concepts, Mr. Thorpe believes that a link exists between financial reporting and operations business process.

[7]Over Respondent's objection, I accepted Mr. Thorpe as an expert in SOX compliance.

[8]The Institute of Management Accounts, the American Accounting Association, the American Institute of Certified Public Accountants, the Institute of Internal Auditors, and Financial Executives International.

In its SEC 10-K filing, Fannie Mae clearly states that their framework for internal controls is based on the COSO framework and that management is responsible for establishing and maintaining adequate internal controls, which in turn helps ensure that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP. In other words, management recognizes the linkage between operations that produce transactions and the results that are produced in financial transactions.

One of the expectations in the RCSA playbook is a graphical representation of all the steps in a particular process with tags for various aspects such as risks, SOX deficiencies, operational incidents, and other matters requiring attention. Operational risk management is also required to keep a data base of operational incidents, which includes a field on whether the incident has a financial impact. And, the SOX team is required to review incident reports for the purpose of identifying any SOX issues. So, operational risk management performs functions that related to information which is relied upon, and reviewed, by the SOX team. In his opinion, there is a clear relationship between the two organizations.

In terms of qualifications and experience necessary to conduct risk and control self assessments, an individual should obtain and maintain a level or understanding and knowledge that enables the person to ably perform the task objectively.

During his review of the March 2010 Dallas report, Mr. Thorpe found several deficiencies that raised questions about whether people in the operational risk function were providing sufficient support that could be relied upon by the SOX compliance team. An operational risk function didn't exist within NSO, which was focused on compliance rather than operationally. The team had limited knowledge of the operational risk pillars, didn't know the FHFA guidance on operational risk, and was unaware of the COSO framework. Unclear distinctions existed concerning roles and responsibility across the three teams. And, questionable leadership practices existed in terms of sharing information. The teams were not organized effectively and were not accomplishing the necessary functions to produce information as they intended in order to support the SOX initiative.

[Cross examination] Mr. Thorpe has never testified as an expert and has not published any books or articles. As part of his preparation, he reviewed the SOX overall program policy for internal controls, JX 450, the SOX risk report monitoring procedure, JX 454, the operational incident tracking manual, JX 401.

Mr. Thorpe's remarks related to the report Mr. Price prepared, JX 455. Mr. Thorpe's notes are in JX 444.

The COSO definition of internal control is broad and has three objectives, effectiveness/efficiency, reliability, and compliance. The reliability aspect would include financial reporting.

JX 445 is Mr. Thorpe's report on COSO internal controls. There are various types of internal controls, including security, document retention, quality control, as well as financial reporting. And, not all of those processes relate to financial reporting.

External financial reporting relates to a company's financial statement. And, SOX is concerned about accurate financial reporting on financial statements. Internal controls may also translate into financial statements of a company.

The three definitions of a control deficiency range from standard control deficiency to significant deficiency, to material weakness, which is the worst level of deficiency and would be reported on a company's financial statements. A significant deficiency would not have to be reported on a company's financial statements; however, it would have to be reported to the audit committee of the Board of Directors. A standard deficiency is not reported to the audit committee or reported on the financial statement. A standard deficiency would be reported to at least operational management to enable remediation.

An operational incident occurs when something that was expected to happen did not happen.

FHFA defines operational incident/risk as exposure to loss from inadequate, or failed internal processes, people, systems, or from external events. In addition to direct and indirect economic losses, operational loss may include legal liability, reputation setbacks, and compliance/remediation costs.

Individual operational incident reports are inputted by the operational risk team into the ACORD system which the SOX team then downloads to determine whether or not the issue rose to the level of a SOX deficiency.

Mr. Thorpe read in Mr. Price's report that the operational risk team was not using the centralized database, ACORD. And, if they are not using the prescribed database, the SOX team would not have the information from the operational risk management team. Instead, they used their own system for tracking which circumvented a critical reporting tool, ACORD. He did not interview anyone from the Dallas operational risk team.

Mr. Thorpe acknowledged that the Dallas report did not specifically state that the Dallas operational risk management team was not also using ACORD. He believes ACORD was in place to track operational incidents also. Whereas, the Dallas group was using a different database tool to track operational incidents. The disconnect is significant because one of the purposes for tracking operational incidents is to report them.

A comparison of some of the incidents in the Dallas' team's database with ACORD show the incidents in both databases, and one of the incidents was followed by the SOX team. However, these two examples are not sufficient to change Mr. Thorpe's opinion. Even if the Dallas team disclosed the incidents, a question arises about why they are not using the ACORD system as expected by management. SOX doesn't mandate a specific control system. But, the SOX deficiency arises when management has decided on control to address and mitigate risk but a team is not using that control. Based solely on Mr. Price's report, Mr. Thorpe concluded that the operational risk management team was circumventing the company's reporting tool. If Mr. Price was incorrect, then Mr. Thorpe would have to rethink his position.

Mr. Price's title did not include auditor, but he performed auditing functions during the Dallas evaluation.

Mr. Thorpe also relied on Mr. Price's report in reaching his conclusions about the qualifications of the operational risk management team. He didn't review their resumes. Mr. Price's report didn't provide the basis for his conclusion, it only stated the conclusion. As a result, Mr. Thorpe is unaware of the underlying data upon which Mr. Price relied.

[ALJ examination] In his report, Mr. Price did not specifically state a violation or a SOX problem. He did not identify actual violations. Instead, in Mr. Thorpe's opinion, his report showed "an absence of information, an absence of accurate information that could lead to financial misstatement, whether that was through the design of the process incorrectly, not identifying accurately what risks are if something should go wrong with the process, and more importantly, designing controls so that they are effective in mitigating risks."

He was identifying liabilities that may arise. And, that in the absence of an operational risk management function performing as expected, the ability to correctly identify and document processes is compromised, which is not a SOX deficiency, that is a failure of a control, but it could lead to a SOX deficiency because a process that is being relied upon to produce data or transactions that become financially reportable is not operating correctly. That in turn will lead to false or inaccurate financial statements, "and thereby at least a SOX deficiency."

[Redirect examination] SEC Section 13, and related rules and regulations, require public companies to maintain adequate internal controls. And, he thinks Mr. Price's report discloses a failure to maintain adequate internal controls "to the extent that operational risk management is part of the control function within Fannie Mae." So, if a component of the control framework isn't being performed adequately, it would be a failure or a deficiency in the control framework.

Dr. Richard B. Edelman[9]
(TR, pp. 790-832)

[Direct examination] Dr. Edelman holds a PhD in business administration with a major in financial economics and is a professor emeritus of American University.

JX 400 is Dr. Edelman's outline concerning the present value of Mr. Price's lost compensation. In preparing the report, Dr. Edelman relied on Mr. Price's resume, his salary history at Fannie Mae, 2010 and 2011 W-2s, and the high and low compensations for Fannie Mae vice presidents. Dr. Edelman also reviewed government data concerning life expectancy, work life expectancy, and projections of wage growth and inflation. Mr. Price's life expectancy is age 75; his work life expectancy is age 65.

[9]I accepted Dr. Edelman as an expert in finance and economics.

Based on this information, and in calculating Mr. Price's loss of income based on a vice president position, Dr. Edelman produced two sets of estimates, one with pre-judgment interest, the other without. Within each set, three subsets reflect low, mid-point, and high compensation for a vice president. After 2013, cost-of-living adjustments were applied. And, then present value was determined. The low, prejudgment figure Is $1,113,728.00; with pre-judgment interests it's $1,116,671.00. For the midpoint vice president salary, the figures are $6,779,449.00 and $6,7986,359.00. The high compensation vice president rates yields $12,443,170.00 to $12,476,047.00.

[Cross examination] Dr. Edelman's calculations assume that Fannie Mae will continue to exit as a company until 2035 while under three options proposed by the current administration, Fannie Mae does not continue to exist as a company.

Dr. Edelman's calculations include bonuses, and do not factor in a consideration whether Congress passes legislation prohibiting bonuses to Fannie Mae senior executives. His calculation also assumed that Mr. Price would remain in the vice president position and not be terminated through 2035.

Dr. Edelman acknowledged that Mr. Price's resume shows a work history in which he was never with the same employer for more than three and a half years.

Dr. Edelman never spoke with Mr. Price. Instead, he relied on Mr. Price's questionnaire, JX 383.

[Redirect examination] In his opinion, Fannie Mae will remain in some form for some time.

Ms. Jill Oliver

(TR, pp. 832-867)

[Direct examination] Ms. Oliver is the Operational Risk Director for enterprise risk management. Her responsibilities include identifying risk issues, conducting reviews, managing remediation plans, implementing risk control self assessments, and reporting incidents. She has been in her current position since 2009.

Ms. Oliver collaborates with the SOX team, sits on the SOX control board, and helps develop remediation plans for identified SOX deficiencies.

Operational risk is the risk of loss due to inadequate or failed internal systems, processes, people, or external event. It can consists of market risk, legal risk, and many other types of risk.

Operational risk is "like an overarching umbrella that cuts across risk types." SOX is one of those risks, which is really a financial reporting risk. As a result, operational risk can have a financial reporting implication. For example, a technology failure may impact on reporting to the general ledger and that can raise a financial reporting inaccuracy that may give rise to a SOX issue.

RCSA is an operational risk discipline tool that helps identify key risks within a business area, assess controls, and determine the efficiency of controls. She has performed several RCSAs. Sometimes, a RCSA is conducted in response to an operational incident. And, an operational incident can have SOX or financial reporting implications. Ms. Oliver uses the RCSA play book when conducting RCSAs in order to keep the process consistent.

One of the inputs during a RCSA is financial reporting.

A control is an activity, or tool, used to manage risk related to a particular area. It can be preventive, detective, or compensating. These controls are identified during a RCSA. During the RCSA, you look closely at controls to determine the effectiveness of the business process.

The deliverables in the RCSA process are a process map, an executive summary, and remediation plans. All the controls, including SOX controls, are noted on the process map. As part of the RCSA, subject matter experts, including SOX professionals, are consulted and provide input.

On a monthly basis, the Review Board meets and "risk leads" such as Ms. Oliver, opine whether a particular issue is of low, medium, or high severity in terms of significance to the company, and how the issue should be addressed. And, the SOX lead will opine whether the issue truly has a financial reporting implication. JX 406 is the SOX Change Control Board's charter. All of the six board members are risk professionals, and most are directors.

In her work with Mr. Rich McGhee, she was surprised that his area did not have any findings considering the complexity of their work.

After she became aware of the new vice president position, Ms. Oliver applied. A month or two later, she was interviewed by a panel. She also meet with Mr. Edwards and during their discussion, Mr. Edwards indicated that he was very impressed with her, and that he could see her in some other opportunities in his organization. At that point, Ms. Oliver thought that she wasn't really being considered for the vice president position. She had had a good interview with Mr. Edwards but then he started talking about other opportunities. Ms. Oliver wondered why he would do that. Mr. Edwards did say that he was still considering her for the vice president position.

The persons on the interview panel were Mr. Wade, Mr. Carter, Mr. Ed Neill, Ms. Gwen Muse Evans, and Ms. Joy Cianci.

After her non-selection, Mr. Edwards never followed up with any other opportunity.

[Cross examination] There are many aspects of operational risk that have no connection with financial reporting risk.

If Ms. Oliver suspects there is a SOX issue when performing a RCSA, she will reach out to a member of the SOX team, to define the extent to which a deficiency is a significant or material weakness. There was never an instance when she located a potential SOX issue and didn't reach out to, or alert, the SOX team.

While not indicated on the organization chart, there are multiple SOX people who participate in the board meetings.

When she discovered an operational incident in the early 2010 time frame, she placed it in ACORD.

When Ms. Oliver made her presentation about Mr. McGhee's group, she did not note any SOX deficiencies. She was just bringing awareness to senior management that his group did not report any deficiencies and it might be an area to evaluate. She gave that report to Mr. Ed Watson.

Ms. Oliver had been at Fannie Mae for 12 years by 2010, and felt she was well qualified for the vice president position. She had eight years of operational risk experience and she had some earlier process mapping experience.

Ms. Melissa S. Werner
(TR, pp. 868-921)

[Direct examination] In 2010, Ms. Werner was the HR recruiter for the newly created position of vice president for operational risk under Mr. Edwards. There were five or six internal applicants for the position which was posted in April 2010. She can presently remember the following five individuals who applied: Mr. Price, Ms. Gray, Ms. Oliver, Mr. Bryan Kanefield, and Mr. Brian McLoughlin. During this process, HR initially determines whether an internal applicant meets a threshold minimum requirement for a posted position before scheduling an interview.

In May 2010, Mr. Edwards' assistant, Ms. Jan Kite, called Ms. Keisha Crutcher in HR and told her that Mr. Edwards had had a conversation with Mr. Price. In response, Ms. Werner called Mr. Price on May 13, 2010 and opened the conversation by saying that she had heard Mr. Edwards had talked to him. Mr. Price replied that Mr. Edwards told him that Ms. Kendra Gray was going to get the job.

Ultimately, none of the internal candidates were selected, and in July 2010 Fannie Mae began efforts to recruit externally.

JX 138 is the investigation memorandum/decision, dated December 6, 2010; she did not see it until about February 2011. The report referred several concerns to HR regarding Mr. Edwards' actions during the selection process to address them as warranted. Ms. Werner became aware of these concerns when Ms. Christine Wolf asked her to make sure the recruitment process was followed to the letter of detail. However, Ms. Wolf did not tell Ms. Werner at that time about the specific concerns; instead Ms. Werner assumed Ms. Wolf was referring to the investigation about Mr. Price's complaint.

During the selection process, Mr. Edwards did not tell Ms. Werner or anyone else in HR to her knowledge that he was going to recuse himself from the process.

[Cross examination] Ms. Werner spoke to Mr. Price on May 13, 2010 by telephone. During the call, Mr. Price asked her if he was still a candidate for the job; he asked the question twice. She replied that he was still a candidate. By the tone of his voice, Mr. Price sounded frustrated, but remained professional and indicated that he wanted to give Ms. Gray a run for her money. Ms. Werner indicated that she needed to get additional information and follow up with him.

Ms. Werner then advised Ms. Wolf of the call, and indicated that Mr. Price seemed agitated as the result of talking to Mr. Edwards, and asked if he was still a candidate for the job. Ms. Wolf stated that she would follow-up on it.

Ms. Werner believes her conversation with Ms. Wolf about following the recruitment process specifically occurred in May 2010. Ms. Werner also believes Ms. Wolf, or one of her directs, would have been responsible for addressing the investigation's concern. She would not have expected Ms. Wolf to come to her about the concerns. Instead, a separate section in HR would likely address the issues.

Ms. Werner recalls the group discussion the interviewers had about all the candidates who had been interviewed. Mr. Edwards did not make any comment or statement during that discussion. At the conclusion of the discussion where all the internal candidates were assessed, the group made a determination that none of the candidates were qualified for the job. After that process, Ms. Werner notified each internal candidate that he or she was no longer considered for the job because he or she did not meet the qualifications.

A search firm was then retained to look for external candidates. The company developed a series of candidates and a couple were interviewed. However, they were unable to come to any decision mainly because "of the nature of the role and kind of how the company was thinking about it strategically at the time." The vice president for operational risk was never filled.

During the selection process for officers at the vice president level, after interviews with the internal stakeholders, the selected person will go before an interview panel for about an hour. If the interview panel endorses a candidate for hire, the recommendation goes to Mr. Tim Mayopoulos, the head of HR, and then to Mr. Mike Williams (CEO). The process is "very thorough." The interview panel usually consists of three senior executives from outside the functional area into which the person is being hired. At times, a selected candidate has been rejected by the interview panel, which is looking for leadership qualities, people management skills, general self-awareness, and the ability to work within Fannie Mae's cultural style. At that point, the emphasis is more on leadership aspects than the technical nature of the job. The search for the vice president for operational risk never reached the interview panel stage.

During the meeting of the interviewers about the vice president position, each interviewer had an opportunity to outline whom they selected as their top two candidates. Ms. Werner does not believe that any interviewer selected Mr. Price as the top selection. He was rated as one of the top two by Mr. Neill, Mr. Marcel Bryar, Mr. Rich McGhee, and Mr. Wade. Mr. Wade selected Ms. Gray as his top choice. Mr. Wade indicated that while Mr. Price had far more technical knowledge, he appeared to lack the ability to bring teams together. He felt Ms. Gray was stronger in terms of team-building and leadership attributes. Mr. Wade appeared to value the leadership attributes. Mr. Wade did not make comments about any other candidate other than to say that Jill (Ms. Oliver) and Bryan (Mr. Kanefield) were non-starters.

Mr. Neill had the same selections as Mr. Wade. According to Mr. Neill, Ms. Gray had the ability to lay out an operation but he still had concerns about her ability to handle a large team and the technical aspects of the vice president position.

Mr. Bryar also chose Ms. Gray then Mr. Price. He advised that Ms. Gray knew how to run an operation and build controls and she could ramp up quickly. Mr. Price was a good director but Mr. Bryar was looking for more leadership. In an earlier email, JX 172, he provided a similar rationale to Mr. Edwards. He sent a similar email to Ms. Werner, JX 20, with the individual evaluations, JX 21 to JX 24.

Mr. Jeff Hayward selected Ms. Gray and then Ms. Oliver. He agreed that Ms. Gray was good at "operationalizing" and getting up to speed quickly. She also had the leadership skills. Ms. Oliver was effective at getting things done but maybe was a little too direct.

Mr. McGhee ranked Ms. Gray number one and Mr. Price number two. He emphasized Ms. Gray's success in running an operational risk function and her leadership ability, as well as her HAMP experience, but he wasn't sure of her technical knowledge. Mr. Price understood the job and was working towards it. In an email to Mr. Edwards, JX 9, he provided the same rankings and attached his evaluations, JX 10 to JX 13.

Ms. Joy Cianci put Ms. Gray first and Mr. Kanefield second. She mentioned that Ms. Gray had the least technical knowledge but could get up to speed quickly. Ms. Cianci was familiar with Mr. Kanefield's work since he reported to her. In an earlier correspondence, JX 171, she indicated that Mr. Price should not be hired for the position. JX 19 is Ms. Cianci's email feedback to Mr. Edwards and Mr. Fred Parker, in the HR organization, supporting Mr. Edwards. She did not attach the interview forms.

Ms. Muse Evans did not attend the debrief discussion. However, she had earlier advised that FHFA viewed the position as high value and she was concerned that the candidates didn't have a lot of technical depth in comparison to the job description. In an earlier email, JX 25, Ms. Muse-Evan provided her feedback on the candidates. Ms. Oliver was her top choice. Ms. Muse Evans also expressed some concerns about the 10 to 15 year operational risk experience requirement.

Mr. Ted Carter also sent an email to Mr. Edwards, JX 14, with feedback about the candidates and his candidate evaluation forms, JX 15 to JX 18. His specific recommendation for Mr. Price was "hold for the future." At the time, Mr. Carter was in the operational risk organization.

[ALJ examination] Ms. Werner became aware about hiring a vice president for operational risk in early April 2010. At that time, she was not aware whether Mr. Price and Mr. Edwards already had a conversation about the position. She became aware of Mr. Price's complaint when she was called by investigations, which occurred after her May 2010 conversation with him. At the time of their conversation, Ms. Werner was not aware that he had any complaint about the selection process.

Vice president is an organizational bright line, above it are executives, below it are professional staff. Below the vice president level, a person may be moved into a director position without a formalized process.

Mr. Edwards came to Fannie Mae in September 2009.

Ms. Werner was given the position description for vice president. She doesn't know who wrote it.

The interviewers in the selection process were Mr. Carter, Mr. Wade, Mr. Neill, Mr. McGhee, Ms. Cianci, Mr. Bryar, and Ms. Muse Evans. Ms. Werner also scheduled interviews for Mr. Edwards but he did not provide any feedback.

During the interviewers' discussion, although Ms. Gray received the majority of the votes, they had a conversation about the fact that she did not have the technical requirements for the job and the regulator (FHFA) would have some concern about that. Eventually, the group decided that none of the candidates met the requirements of the job. Ms. Wolf was leading the discussion and the general conclusion was that none of the internal candidates were qualified.

Mr. Carter, Mr. Wade, Mr. McGhee, and Ms. Muse Evans were not in Mr. Edwards' supervisory chain. Mr. Neill and Ms. Cianci reported to Mr. Edwards, and Mr. Bryar reported to Ms. Cianci.

If one of the internal candidates had been selected, the next step would have been the executive panel interview. In order to avoid a conflict of interest, the executive for that panel would not have come from Mr. Edwards' business enterprise. This process also factors out the ability of a person in a business enterprise affecting the outcome. Mr. Edwards would not have supervised any of the executive panel members, who are senior vice presidents or higher.

[Redirect examination] Mr. McLaughlin was initially a candidate and scheduled for interviews. However, he was later determined not to be qualified. So, only four candidates went through the interview process.

Mr. Edwards received copies of all the interviewers' feedback.

On the evaluation forms, Mr. Carter, Mr. McGhee, and Mr. Bryar indicated that Mr. Price exceeded the specific job knowledge and related experience.

In her correspondence, JX 25, Ms. Muse Evans ranked Ms. Oliver first and Mr. Price second, who was indicated to be very close to first.

By the time of the final portion of the group discussion, Ms. Werner was already thinking about her next task of informing the candidates of their non-selection. However, she can not explain why her meeting notes did not include the group's consensus determination.

At the time of the group discussion, Ms. Werner was not aware that Mr. Edwards was in Ms. Wolf's office.

Ms. Werner does not recall a conversation with Ms. Wolf and Mr. Edwards about accepting the group consensus.

[Re-cross examination] Mr. Carter also noted in his evaluation that Mr. Price did not have extensive experience in the operational risk space but had been involved in the recent initiative. Mr. Carter thought Mr. Price was an excellent candidate but he had reservations about his maturity level and ability to manage relationships.

Ms. Gwen Muse Evans
(TR, pp. 927-972)

[Direct examination] Ms. Muse Evans has worked for Fannie Mae for over 10 years. Since April 2010, she has been the vice president and chief risk officer for credit portfolio management, reporting to Fannie Mae's chief risk officer. She is in the same general organization as Mr. Wade.

In 2010, during a conversation with Mr. Wade, he told her that one of the recommendations that his team made after a recent review of the Dallas organization was the creation of a vice president position for operational risk in Dallas. Their team did an in-depth review of the Dallas operation for operational risk management, probably because it was a fast growing area. Mr. Wade indicated that they had identified a number of issues. He described some of them, but she doesn't recall what they were other than some staffing/retention issues. She doesn't remember reading the lengthy report itself. Mr. Wade may have told him about a mail room incident. Mr. Wade mentioned Mr. Price was one of the main persons who worked on the report.

Ms. Muse Evans believes Mr. Wade shared the report with the chief risk officer and Mr. Edwards. Mr. Wade did not tell her their reactions to the report.

The vice president would report directly to Mr. Edwards with a dotted-line relationship with Mr. Wade. Prior to the interview process, Mr. Wade did not discuss potential candidates with her.

Ms. Muse Evans also had a conversation with Mr. Price about conditions in Dallas. And, he offered himself as a resource. And those issues weren't part of her focus. Mr. Price did not specifically refer to the report. She doesn't know whether he mentioned a concern about a lack of internal controls.

Mr. Wade did not advise her that any of the issues that they discussed had SOX implications. Mr. Wade did not tell her about breakdowns in internal controls. He was somewhat guarded about the report due to its sensitivity and didn't go into extensive detail.

Fannie Mae has a process for reporting SOX implications. However, there is no requirement for business areas to report SOX deficiencies to Ms. Muse Evans. SOX follows a different path. If someone brings a SOX issue to her, they report it according to the applicable policy.

Prior to being selected as an interviewer for the vice president of operational risk position, she did not talk to anyone about the new position. She was selected as an interviewer because the interviewing panel consists of key leaders who will work with the selected candidate in the new position. As the chief risk officer for that area, she would be working closely with the new vice president. Ms. Muse Evans was the enterprise risk management representative. She expected the other interviewers to be a mix of business people from Mr. Edwards' organization and risk people because the position involved two aspects: technical and leadership. The interviewers were very seasoned professionals and officers of the company who had a very good view of the challenges from an operational risk perspective.

Other than the job description that she received prior to the interviews, Ms. Muse Evans had no other source of information concerning what the job would entail.

At the start of the process, she reviewed the job description and the applicants' resumes, and obtained information about their backgrounds. She also talked to Mr. Wade about the vision for the job. She learned from him that he had written the job description.

JX 2 contains the resume of Mr. Price. His resume showed experience in risk management but operational risk is a different discipline.

In her discussions with Mr. Wade, he indicated that Mr. Price had the most in-depth knowledge of the Dallas organization and the associated issues. But, she still had a concern about any of the candidates having the requisite qualification and questioned whether they shouldn't expand the search. Nevertheless, she participated in the interview process with all four applicants.

In her interviews, Ms. Muse Evans was focused on how the applicant would build something new and provide the necessary leadership for dealing with the strong personalities in Dallas. The new vice president would be delivering bad news which is a difficult task. So, she was looking for leadership strengths and characteristics.

After the interviews, she concluded none of the applicant's had the necessary experience that was required for a seasoned leader and officer. Because Ms. Muse Evans was not able to join the interviewers' debrief discussion, she provided Ms. Werner an email ranking of the candidates, with comments, JX 25. In her fourth point, she left out one word; she meant to say that none of the candidates met the technical requirement. She ranked Ms. Oliver as the strongest candidate because she had the strongest interview and provided examples of operational risk problems that she had already solved.

The vice president role was not filled and eventually Mr. Edwards asked Ms. Muse Evans to play a more active role in overseeing some of the operational risk aspects in Dallas.

[Cross examination] Mr. Wade also gave Ms. Muse Evans feedback on Ms. Gray, indicating that he had limited experience with her from an operational risk perspective since that wasn't her current role. She interpreted his comments to mean that Ms. Gray did not have a lot of operational risk accomplishments.

In her rankings, Mr. Price was a very close second, and Ms. Gray was third.

During her interviews, when questioned, none of the applicants indicated he or she didn't have 10 to 15 years experience. They all attempted to explain how their experience qualified because it was operational risk-related, and they focused on accomplishments.

Ms. Muse Evans believed the interviewers were only providing feedback, rather than selecting a candidate. She didn't know who would make the selection.

[ALJ examination] Prior to the interviews, Ms. Muse Evans spoke to Mr. Edwards after she attended a meeting which included Ms. Gray when she was a candidate. She was trying to understand from Mr. Edwards why Ms. Gray was at the meeting since she really didn't have a formal role. Mr. Edwards responded that he fully supported an objective process but he was trying to give Ms. Gray more of a view of the Dallas operation. She asked him if he had already made a selection and he said no. He was letting the process play itself out and advised Ms. Muse Evans to continue with the process as though all the candidates had a fair chance.

During the interview process, Ms. Muse Evans was unaware that Mr. Price had made a complaint about the process.

Ms. Joy Cianci
(TR, pp. 998-1035)

[Direct examination] Ms. Cianci heads a team that is running the Making Home Affordable Program for the U.S. Treasury, through Fannie Mae, which has been going since February 2009. She has been with Fannie Mae for about 19 years; she became an officer in the early 2000s. Eventually, she was promoted to senior vice president, and head, of HAMP.

In April or May 2010, she was asked to be an interviewer to the new position of vice president of operational risk in Dallas, and eventually interviewed Mr. Price, Ms. Gray, Mr. Kanefield, and Ms. Oliver.

During her interview with Mr. Price, he caught Ms. Cianci up with his work with Lean Six Sigma since leaving the Office of Community and Charitable Giving ("OCCG."). She explained to him the difference between being a contributing director and moving into a leadership position. She was looking for someone with leadership skills in direction-setting and strategic vision. So, Ms. Cianci wanted the interviewee to focus less on getting the job done, and more on the ability to build and lead a team. Another purpose of the interview was to coach the applicants about focusing on the vision for building a team. From her experience, rather than subject matter expertise, the critical leadership component was being able to fit all the talent pieces together and applying that talent.

In terms of Mr. Price's leadership experience, he had managed fewer than 10 contractors. Mr. Price was very "uplifted" and energetic about his accomplishments and stated that he would get the next job done in the new role. That response led her to coach him about stop seeing himself as a doer, which is very different from being a leader. A lot of conversation involved "doer-oriented" work.

After the interviews, Ms. Cianci provided Ms. Werner with feedback, JX 19. The second listed applicant was Mr. Price. Indicating that Mr. Price was overly impressed with his own accomplishments in the credit organization, Ms. Cianci was not sure how that experience translated in terms of "teaming and partnering." Her reaction was that being humble about your accomplishments would reflect an understanding that results occur due to partnering and collaboration across groups. She thinks the first compliment about accomplishments should go to the team. Great accomplishments are typically bigger than one individual. She had not observed Mr. Price build a strong team and develop them while he was working in OCCG. His group was inexperienced, underperformed year after year with low ratings, and should have been worked out of the organization. After Mr. Price left, the remaining two individuals eventually were moved out of the organization. Mr. Price also had some tough relationships with other individuals in OCCG. The feedback that she received was that Mr. Price was difficult to partner with.

As a result of these considerations, and believing that he need more time to develop, Ms. Cianci ranked Mr. Price with a "no" for hire.

Ms. Cianci had been working with Ms. Gray in HAMP and she was familiar with the team she had build for HAMP, which consisted of over 100 individuals. Ms. Gray had a strong track record of creating things, and moving from implementation to structuring a team, with practices and controls, and running an operation. Ms. Gray had the least knowledge base of operational risk, and expertise among the candidates. She rated Ms. Gray as a "yes" for hire because she was the strongest organizational leader among the applicants and exhibited the ability to successfully move something from concept to implementation.

The other applicant Ms. Cianci recommended for hire was Mr. Kanefield.

During the group discussion with interviewers, Ms. Cianci participated while sitting in Ms. Wolf's office. During the conference call, Ms. Cianci provided her feedback on the candidates.

Ms. Cianci reports up to Mr. Edwards. She was not familiar with any report or analysis done on the Dallas risk organization is early 2010. Likewise, at the time of the interviews, she was not aware of any complaint by any of the applicants.

Mr. Edwards did not at any time express an opinion to Ms. Cianci about Mr. Price or Ms. Gray. She "definitely" did not have any knowledge whom Mr. Edwards preferred for the position.

[Cross examination] In 2007 and 2008, Ms. Cianci and Mr. Price worked together in OCCG. She headed the grants strategy team while Mr. Kevin Smith was in charge of the grants management team and Mr. Price reported to Mr. Smith.

During that period, through calibration sessions in which everyone provided feedback to everyone else, Ms. Cianci provided feedback about Mr. Price. Whether Mr. Smith included that feedback in Mr. Price's ultimate evaluations was up to him.

In 2007, significantly exceeds was the highest possible overall rating. Similarly, leadership plus was the highest rating in that category.

[ALJ examination} In April 2010, Ms. Cianci moved into her new role and came under Mr. Edwards' supervision. On average, she had contact with Mr. Edwards about once a week.

While interview forms were available for use, Ms. Cianci thought her email was sufficient and didn't fill out the forms.

Ms. Cianci recognizes that some executive level positions require subject matter expertise, such as the legal department. Otherwise, she would expect the person selected for vice president for operational risk to surround himself with subject matter experts and be extremely bright enough to learn quickly.

Ms. Cianci doesn't remember whether the vice president position description required 10 to 15 years of operational risk experience. She believes that none of the applicant had 10 to 15 years; nevertheless, there were "valid" candidates. Ms. Cianci considers position description requirements as guidelines to finding the best candidate and not absolute.

Ms. Cianci would not be surprised if Mr. Smith rated Mr. Price as leadership plus because Mr. Smith was a big fan of Mr. Price in terms of dedication to the team and work. Had Mr. Price been working for Ms. Cianci at the time, she probably would not have given him a plus in leadership.

During the interviewer discussion, Mr. Edwards, Mr. Wade, Mr. McGhee, and Mr. Jeff Hayward were also in Ms. Wolfe's office with Ms. Cianci. Mr. Edwards was in a "listening mode." Ms. Wolfe conducted the discussion and asked each interviewer for feedback.

Dr. Ronald Schmidt[10]
(TR, pp. 1035-1063)

[Direct examination] Dr. Schmidt holds a PhD in economics. JX 349 is the report he prepared for this case. He also reviewed Dr. Edelman's report, JX 400.

The choice of a discount rate is very significant in terms of establishing present value of a future stream of earnings. Dr. Edelman's discount rate of 1.15% is extremely low, and his use of an after-tax rate is very unusual. Typically, a discount rate is used with pre-tax income.

Dr. Schmidt used a 6% discount rate which factors in a 3% inflation rate. Use of that discount reduced Dr. Edelman's damage calculations by 30%.

Dr. Schmidt also considered Fannie Mae's figures on employee turnover in order to assess the probability of staying in a job; whereas Dr. Edelman only considered the probability of staying alive. At Fannie Mae, attrition rate for officers is about 19%, which means about every five years, there is a full turnover in staff.

Dr. Schmidt also considered that in terms of its continued existence as an organization Fannie Mae is under attack. This lead Dr. Schmidt to use a conservation discount rate.

Exhibit 4 shows different wage scenarios for loss of wages through June 30, 2012, which is two years from the promotion denial. These calculations show a wage loss of $74,000 to $135,000.

[ALJ examination] Dr. Schmidt's calculations assume that after two years, Mr. Price would obtain a similar job elsewhere. Another assumption is that within two years, Mr. Price may have the opportunity to move to other financial organizations.

[Cross examination] Mr. Price's resume was not a factor in his calculations. Likewise, he did not use the position description.

Dr. Schmidt did not have turnover rates that compared officers to directors

In his deposition, Dr. Schmidt acknowledged that the likelihood that Mr. Price would receive another promotion was outside his expertise, as well as Dr. Edelman's expertise.

Dr. Edelman used a short-term risk free discount rate.

[10]I accepted Dr. Schmidt as an expert in economics.

Ms. Stephanie Bahr
(TR, pp. 1064-1105)

[Direct examination] Ms. Bahr has worked at Fannie Mae for seven years, and is a CPA. She was promoted to vice president for internal audit for SOX, HAMP, and corporate audits in early to mid 2009. When she joined Fannie Mae, Ms. Bahr was responsible for setting up the SOX program in the finance area. In 2009, she was promoted to a vice president position with the responsibility to oversee the execution of the SOX program corporate-wide. She was also responsible for internal audits of HAMP, and managed the corporate audit portfolio In May or June of 2011, Ms. Bahr became the vice president and chief risk officer for operational risk.

At Fannie Mae, a team of individuals is dedicated full time to the SOX program and are responsible for "meeting with the process owners (managers, directors, vice presidents), creating the process maps, and the vin diagrams that show how the information flows within the process." They identify and document all SOX-relevant controls, and perform design assessment around those controls. They also work with the external auditor, Deloitte and Touche, to make sure everyone agrees the controls are designed properly. Fannie Mae has about 400 key, SOX-relevant controls across the financial reporting streams.

A SOX control is a control that is in place to help prevent, or detect material misstatements to the financial statements. In designing a SOX control, the team works with the business to identify their significant risks and determine mitigation, such that if the control operates fully as designed, it fully mitigates the risk.

A SOX testing cycle involves an outside auditor coming in about three to four times a year to take a sample of how the control is actually executed. They pull information and re-perform the control to ensure it's operating as intended.

JX 450 is Fannie Mae's overall program policy for SOX, which is periodically amended. The individual who approves the changes presently is Mr. Greg Fink, senior vice president of financial reports. Formerly, Ms. Tricia Black, vice president of financial controls and the head of SOX oversight, approved changes. That change of supervision occurred when the regulator opined the internal audit should not be the actual owner of SOX policy. So, it was determined that Mr. Fink was the most appropriate person because he had ultimate responsibility for financial statements.

JX 454 is the procedure the SOX team uses to review other information as part of the quarterly closeout. As part of that process, they review operational incidents for SOX implications. The source of their information about operational incidents is the ACORD system.

JX 391 is an operational incident report, which was a tracker tool used by the NSO Team in Dallas, supervised by Mr. John Hurt, to comment on their operational incidents. The numbers in the right column of the report are the ACORD identification numbers.

JX 392 and 393 are spreadsheets downloaded from ACORD that are used by the SOX team to track the disposition of operational incidents being reviewed. The columns indicate whether the incident was a SOX reportable incident, show which member of the SOX team read the information and who completed the procedure, and display the ultimate disposition. A notation that the incident is not "302 reportable" means the incident was deemed to be "not SOX relevant." If the incident is SOX relevant the last column assigns a deficiency number.

On JX 392, all the incidents were deemed not to be 302 reportable. "302" refers to the specific section in SOX that relates to disclosure. The terms "FR" on the spreadsheet means financial reporting impact.

SOX deficiency number on JX 393 is the number assigned to an operational incident for the purpose of assessing ranking its significance.

On JX 392, far left column, the incident numbers are unique identifiers driven by ACORD. Based on this document, and noting that many of the reported incident occurred in 2009, for example, deficiency ID 950, Ms. Bahr believes that as of February 4, 2010, Mr. Hurt's team was inputting operational incidents into ACORD.

To her knowledge, no one from operational risk alerted the SOX team that there was an operational incident that may have had SOX implications related to a study that had been performed on Mr. Edwards' organization. No one from operational risk identified an operational incident about the management of Mr. Hurt's NSO team.

[Cross examination] In her opinion, the SOX compliance effort at Fannie Mae is an example of operational risk management. However, SOX and operational risk are run by two different divisions.

JX 424 is a 2006 email from the senior vice president of operational risk which states that SOX and operational risk management go hand-in-hand as key elements in the operational discipline focus.

When she moved from SOX to her present vice president position in operational risk, her prior experience was helpful.

Section 404 of SOX refers to management having a process to assess its internal controls over financial reporting.

Based on her understanding, when notified of a potential operational incident, Mr. Hurt's team would log it into their tracking tool while they determined whether it was truly an operational incident. If it was, then the operational incident would be logged into ACORD. They were using a separate database. If that operational risk management team does not identify an operational incident that may have SOX implications, it could potentially mean that a SOX issue was not reported. And, there have been instances in which the SOX team learned of an operational incident for the first time from work presented to them by operational risk management.

Reporting to the FHFA is done from the ACORD system. And, FHFA is the principal regulator of Fannie Mae.

JX 406 is the charter for the SOX Change Control Board which consists of six voting members, including the vice president of risk management.

In March 2010, the SOX team had its own dedicated people for Dallas and interacted with Mr. Hurt's team. At the very least, the SOX team would have provided the operational risk team in Dallas with the monthly deficiency report.

[Re-direct examination] The SOX Change Control Board determines whether a management tool, such as a spreadsheet is financial reporting relevant. If the tool has financial reporting relevance then any change to it must be approved by the SOX Change Control Board. The SOX team may also make a recommendation about whether an application or EUC should be considered to have financial control relevance or be retired. The SOX Change Control Board makes those decisions. The SOX administrator would present the recommendations to the board.

Within the last six or seven months, the SOX Change Control Board has been disbanded.

Every time a new incident is entered into ACORD, an incident number is automatically generated; it's a unique identifier. Mr. Hurt's team was using the ACORD system as well as their own EUC list to track operational incidents. From a SOX perspective, there is nothing wrong with tracking operational incidents on a separate EUC as well as reporting them in the ACORD system. Most people want to make sure that they actually have an incident before putting it in ACORD, because once it is in the system it can never come out of ACORD. And, once entered, a timeline for approvals and remediation plans is initiated.

When Ms. Bahr spoke to Ms. Cheri Morrison on Mr. Hurt's team, Ms. Morrison indicated they used the spreadsheet to basically dump an incident in it whenever they heard about something. Then, they would research it, track it, and if it was established that it was an incident, enter the incident into ACORD. As a result, they would know about a potential operational incident before it was placed in ACORD. However, many times, the operational risk team would only hear about an incident which just might be noise, so "you want to make sure that you validate." In her opinion, this process does not have any SOX significance because in all the cases she remembers most of the significant deficiencies or material weaknesses from a SOX perspective have been identified through other means, rather than operational incidents. She doesn't recall a single instance where review of ACORD revealed a significant SOX deficiency or material weakness Instead, they had their testing cycles to evaluate how controls were functioning, and they worked very closely with the financial reporting team. Additionally, the outside auditors also conducted their own set of substantive testing. Nevertheless, the regulator requires a corporate tracking tool like ACORD.

An operational risk is focused on economic loss, such as incorrectly pricing a loan. From a SOX perspective, as long as the actual price is recorded, which accurately reflects what was actually charged, the financial reporting is correct.

The operational risk relationship between the operational risk program and the SOX program in March 2010 is not the same as it was in 2006. Yet, while a subset, the SOX effort remains the most recognized example of operational risk management.

The normal practice for Fannie Mae business units was to conduct some research before reporting an operational incident in ACORD.

Ms. Kendra C. Gray
(TR, pp. 1106-1138)

[Direct examination] Ms. Gray is currently the vice president of HAMP operations. In that capacity, Ms. Gray is responsible for managing "back office" operations for the Making Home Affordable Program, which is a government-sponsored program through the Department of the Treasury, with Fannie Mae and Freddie Mac as servicers. Her organization collects data on the modifications under the program. She was promoted in December 2010.

In mid-2010, Ms. Gray became aware of the vice president for operational risk position by an email announcement. Her colleagues also told her about the opportunity and encouraged her to apply. Her supervisor, Mr. Rich McGhee, talked to her about how the position would be applicable as the next career move. At that time, Mr. McGhee was not in Mr. Edwards' organization.

Ms. Gray applied for the positon because she believed that she possessed many of the qualifications, including the ability to start a new group, which was what Ms. Gray had been doing most of her career. She also had a wide variety of experience in business, technology, and operations. JX 4 is the resume that Ms. Gray submitted with her application. Although Ms. Gray had never held a position with the title of operational risk, in a variety of her jobs she was able to play an operational risk role or function. Additionally, for a Fannie Mae officer leadership and team-building are critical components. In each of her former jobs, Ms. Gray took on "leadership-type" roles. At Freddie Mae, she moved quickly from project manager, to senior project manager, to director in "very short order . . . mainly due to my leadership skills." She also built up a small start-up group of five people into an organization of several hundred people.

Ms. Gray also brought her leadership skills to bear when she joined Fannie Mae in 2008 as the director of servicer oversight to start the oversight function in the single family operations group. Her associated responsibilities concerning documentation and controls related to operational risk. Then, in February 2009, Ms. Gray was asked if she was willing to start up and lead the HAMP operations group, which was a brand new organization brought about by federal law. In building the group, she focused on people, process, and tools. Within 18 months, she built an organization of 125 people, with five directors. As part of that group, Ms. Gray created an operational readiness team to manage operational risk in the production environment. Her group was not in Mr. Edwards' organization. However, she occasionally had contact with him during project status meetings.

After Ms. Gray submitted her application, she told Mr. Edwards that she had applied. Ms. Gray went through a series of interviews. After the interviews, she didn't believe that she would get the job because on paper she did not have the 10 to 15 years operational risk experience. Eventually, Ms. Werner called and advised that she did not get the position. According to Ms. Werner, it was going to be difficult to find a candidate who met all the qualifications, particularly since operational risk was a fairly new discipline.

[Cross examination] After she applied for the position, Mr. Edwards asked her to participate in meetings with FHFA representatives in Dallas for non-HAMP functions. During the first day of the meetings, Mr. Edwards' administrator, Ms. Jan Kite, told Ms. Gray that she was not going to be able to continue participating in the meetings. Ms. Gray believes that action was related to the fact that she had applied for the vice president position.

Ms. Gray believes that she gained operational risk management experience in the positions that she held throughout her 18 to 19 year professional career.

Shortly after position was announced, Mr. Edwards forwarded the announcement to Ms. Gray with a smiley face emoticon, JX 67 on April 22, 2010. She interpreted his action as "here's an opportunity."

[ALJ examination] Ms. Gray was not surprised to get the email from Mr. Edwards because she had already demonstrated very good success in leadership in another program under his sponsorship; he was the executive sponsor of her program.

Ms. Gray did not get any smiley emails from any other executive.

Ms. Gray doesn't recall whether she first heard about the position from an email or conversation.

Ms. Gray is familiar with the selection process for vice presidents, which includes a panel interview.

Mr. Edwards invited Ms. Gray to the FHFA meetings in Dallas. He invited her because she had built strong relationships with FHFA and Treasury partners; consequently she could perhaps give him some advice or guidance. When told to leave, Ms. Gray's response was to conform and return to Washington DC. At the time, she did not consider an appearance of a conflict in interest. Ms. Gray was not aware who the interviewers were going to be at that time. However, since the job was in Dallas, Ms. Gray believed that Mr. Edwards would have to be one of the interviewers. When she went to Dallas, Ms. Gray had an idea that he probably would be one of the interviewers.

Documentary Evidence[11]

Interview Schedule, Mr. Price's Resume, &
Vice President Job Description
(JX 2 and JX 386)

In a June 7, 2010 email, several interviewers received the interview schedule for Mr. Price, his resume, and the position description for Vice President for Operational Risk – Credit.

Mr. Price was scheduled to be interviewed as follows: Mr. Ed Neill (senior vice president ("SVP") – Credit Loss Management), June 8, 20101; Mr. Rich McGhee (SVP – HAMP and Credit Loss Management), June 10, 2010; Mr. Terry Edwards (Executive Vice President – Credit Portfolio Management), June 10, 2010; Mr. Claude Wade (SVP – Operational Risk Strategy and Proc. Excel.), June 14, 2010; Mr. Marcel Bryar (Vice President ("VP") – Making Home Affordable Program Office), June 14, 2010; Mr. Jeff Hayward (SVP – Community Lending & Development), June 14, 2010; Mr. Ted Carter (Director – Operational Risk), June 15, 2010; and Ms. Gwen Muse Evans (VP – Enterprise Rick Policy & Guidance), June 15, 2010.

Mr. Price's resume highlighted his professional experience as follows: Director, Lean Six Sigma, Enterprise Management Division (January 2009 to present); Director, Business Operations, Office of Community and Charitable Giving (April 2007 to January 2009); Managing Director, Technology and Operations, Fannie Mae Foundation (November 2004 to March 2007); Director, Program Management, Carey International Chauffeured Services (September 2001 to November 2004); Director, Enterprise Infrastructure Practice, Hitachi (April 2000 to September 2001); Regional Director, Technology Solutions, Price Waterhouse Coopers (February 1997 to April 2000); Project Manager/Network Administrator, Advanced Communications Systems (December 1994 to February 1997); and Network Administrator, Integrated Microcomputer Systems (July 1993 to December 1994). In his resume, Mr. Price referenced operational risk experience and roles in only the two most recent positions that he held since April 2007: Director Lean Six Sigma, and Director, Business Operations. He noted certification as a Six Sigma Black Belt and a project management professional. His education history included a BA in Finance, MS in computer systems management, and a JD.

After stating Fannie Mae's mission of expanding affordable housing and bringing global capital to local communities in order to serve the U.S. housing market, the position description for Operational Risk Lead (Vice President), Operational Risk Management, in Dallas, Texas lists several qualification requisites, including "extensive" understanding of operational risk management and risk origination functions, "extensive" knowledge of Fannie Mae's business and process, "proven leadership skills with focus on ability to manage and influence," experience leading large scale projects through an entire lifecycle, proven relationship management skills, proved experience in successfully interacting with FHFA or other external regulators/stakeholders, 10 to 15 years of operational risk management-related experience, and Six Sigma Black Belt certification at least within one year.

[11]While I have read and considered every admitted document, I have only summarized relevant portions of the exhibits that were not unduly repetitious of the hearing testimony.

Ms. Gray's Interview Schedule and Resume
(JX 4)

In a June 7, 2010 email, several interviewers received the interview schedule for Ms. Gray, her resume, and the position description for Vice President for Operational Risk – Credit.

Between June 9 and June 15, Ms. Gray was scheduled to be interviewed by Mr. Edwards, Mr. Neill, Mr. Wade, Mr. Carter, Mr. Hayward, Ms. Cianci, Ms. Muse Evans, Mr. McGhee, and Mr. Bryar.

Ms. Gray's resume highlighted her professional experience as follows: Director, Making Home Affordable Program (HAMP) Operations, and Director, Servicer Oversight - Single Family Operations (March 2008 to present); Manager, Financial Services, Bearing Point (May 2004 to February 2008); Director, B2B Integrations, BCE Emergis (September 2002 to April 2004); Technical Assistant up to Senior Project Manager, Electronic Mortgages Services, Freddie Mac (July 1995 to September 2002); and Computer Systems Analyst, CACI, Inc. (July 1992 to June 1995). Ms. Gray emphasized that in her present position, she worked regularly with regulators and oversight groups, including FHA. On several occasions, she had established, led, and developed new organizations. She did not highlight any operational risk management experience. Her education included a BS in Management Science.

Candidate Evaluations – Mr. Rich McGhee
(JX 9 to JX 13)

On June 18, 2010, Mr. McGhee sent an email and interview evaluation forms to Ms. Werner and Mr. Edwards ranking the four candidates for the vice president position as: 1 – Ms. Gray (hire); 2 – Mr. Price (hold for future); 3 – Mr. Kanefield (hold for future); and 4 – Ms. Oliver (decline to hire). The principle differentiating factors was demonstrated ability to create and lead teams, and ability to work with a diverse set of parties at the officer level. Ms. Gray received an overall rating of "exceeds" (five "exceeds" in specific categories out of eight, with demonstrated skills in organization building and leadership); Mr. Price received an overall rating of "meets" criteria (two "exceeds," with acknowledgement that he was an operational risk expert). Mr. McGhee suggested that after all the interviews a few of the evaluators should meet to discuss the differentiators.

Candidate Evaluations – Mr. Ted Carter
(JX 14 to JX 18)

On June 23, 2010, Mr. Carter sent an email and interview evaluation forms to Ms. Werner, with a copy to Mr. Edwards. Ms. Gray (hire) received an overall rating of "meets" with one "exceeds" in relationship management skills based on her interaction with regulators. Mr. Price (hold for future) received an overall rating of "meets," with one "exceeds" in business focus. Mr. Kanefield (decline to hire) and Ms. Oliver (decline to hire) received overall ratings of "does not meet."

Candidate Evaluations – Ms. Joy Cianci
(JX 19 and JX 171)

On June 25, 2010, Ms. Cianci sent an email to Ms. Werner and Mr. Edwards setting out her evaluation of the four candidates. She rated Mr. Kanefield and Ms. Gray as "hire" while Mr. Price and Ms. Oliver were not recommended for hire. Mr. Kanefield was a strong subject matter expert with proven record of leadership and could work well with all levels of the company. Ms. Gray had the least subject matter knowledge and was not very familiar with the credit organization; however, she was the strongest organizational leader and had a track record demonstrating the ability to grasp new areas quickly. Mr. Price had strong understanding of the subject matter and credit organization; yet, he over-emphasized his own accomplishments which raised concern about his ability to partner with others.

Candidate Evaluations – Mr. Marcel Bryar
(JX 20 to JX 24)

On June 27, 2010, Mr. Bryar sent an email to Ms. Werner and Mr. Edwards with his evaluation forms. In his opinion, Ms. Gray ("hire") was the top choice. In addition to understanding the operational risk framework, Ms. Gray understood how to bring together multiple stakeholders for coordination. Mr. Kanefield ("decline to hire") was his second choice. Mr. Bryar was uncertain about the management and leadership skills of Ms. Oliver ("decline to hire"). Mr. Price ("decline to hire") needed more experience but had great potential. Ms. Gray received four "exceeds" on the evaluation form. Mr. Price received none.

Candidate Evaluations – Mrs. Gwen Muse Evans
(JX 25)

In a June 30, 2010 email, Ms. Muse Evans advised Ms. Werner that she ranked the candidates as follows: 1 – Ms. Oliver; 2 (very close to 1) – Mr. Price; 3 – Ms. Gray; and 4 – Mr. Kanefield. The major factors she considered were demonstrated knowledge and competency in operational risk, and knowledge of the Dallas organization. None of the candidates met the technical requirement of 10 to 15 years experience in operational risk management. Ms. Muse Evans noted that she had previously provided feedback to Mr. Wade that the position description contained a length of experience that appeared to be longer than the experience of any of the candidates.

Emails: Mr. Price and Mr. Wade – April/May 2010
(JX 26, JX 29, and JX 30)

Less than an hour after the position of vice president for operational risk management is announced to executives and directors by email on April 22, 2010, Mr. Wade advised Mr. Price that he should apply for the job.

At about 3:00 p.m., on May 12, 2010, Mr. Price sent Mr. Wade an email, advising that Mr. Edwards "asked me to come into his office," and then told Mr. Price that while he was aware Mr. Price was applying for the position, he had made up his mind and was going to hire Ms.

Gray. When Mr. Price asked if he should withdraw from the interview process, Mr. Edwards indicated that he may as well since his mind was made up, but they should still meet to discuss future opportunities. Mr. Price then asked Mr. Wade, “Should I formally withdraw?”

Mr. Wade responded that he wanted to think about the situation and get back to Mr. Price. In the meantime, Mr. Price should stay relaxed and not do anything.

Mr. Price replied that he already reached out to receive external guidance.

In a May 13, 2010 email, Mr. Price informed Mr. Wade that during a conversation with an HR representative about his interview, she first stated that based on a discussion with Mr. Edwards she understood Mr. Price was no longer interested in the position. Mr. Price apologized that he responded without seeking guidance from Mr. Wade, and acknowledged that he might be jeopardizing his career at Fannie Mae but the incident was the “last straw.”

<u>Email: Ms. Wolf and Ms. Werner – April 2010</u>
(JX 31, JX 33, and JX 67)

By an April 20, 2010 email, Ms. Christine Wolf sent Ms. Melissa Werner the position description for the vice president of operational risk management.

Ms. Werner announces the new position located in Washington, D.C. by email on April 22, 2010. All qualified internal and external candidates were encouraged to apply no later than Friday, April 30, 2010.

<u>Email: Mr. Price and Ms. Wendy Fischman – July 2010</u>
(JX 45 and JX 456)

In a July 7, 2010 email, Mr. Price sends Ms. Fischman two additional parts to the Dallas report: the 90 Day Plan, and the Operational Risk Team Review.[12]

The purpose of the 90 Day Plan was “to align the Dallas Operational Risk Team with the Company’s Operational Risk Management Program,” with the focus in operational risk organization alignment, operational risk training, operational and RCSA implementation, and end-to-end monitoring and management. The alignment included identifying operational incident reporters in the NSO business. Detailed training on RCSA and OIT would be conducted. Emphasis would be placed on executing RCSA’s in accordance with the playbook and executing to OIT program in accordance with OIT standards. The NSO risk team should be reviewing and approving operational incidents. And, completed end-to-end RCSAs and remediation plans would be monitored.

[12]JX 45 only contains the 90 Day Plan.

<u>Dallas Report Memorandum</u>
(JX 46)

On July 15, 2010, Mr. Price provided Ms. Fulcher a copy of the NSO Operational Rick Management Team Review. Due to the structure and composition of the current NSO team, which was typical for a compliance function, the team concluded the NSO operation risk management organizational structure and execution model were insufficient to successfully execute Fannie Mae's operational risk management program. The attached memorandum provided an overview of the current NSO's organizational structure and the team's two day evaluation, key observations, and "next steps."

In terms of organizational structure, of the 19 NSO employees, consisting of three teams (risk and control – focused on operational risk issues; server compliance – focused on resolving audit findings; and, internal compliance – focused on compliance functions as a liaison to internal and external auditors and SOX) 13 individuals were "explicitly" focused on internal or external compliance functions.

The team found that an operational risk function was not present within NSO. The operational risk pillars were not implemented, with the team members demonstrating little knowledge of their functions and an unawareness of core operational risk frameworks. Unclear distinctions of roles and responsibilities existed across the three NSO teams, with conflicts existing between NSO job descriptions and HR's descriptions for operational risk leads and analysts.

The NSO had developed their own EUCs for tracking operational incidents versus the corporate tool (ACORD), and to manage LARC transactions.

Leadership informational sharing was questionable since information, such as copies of the operational risk report, were not shared with the NSO team.

As next steps, the team intended to return to Dallas to review the 90-day plan for aligning the NSO team with the operational risk program and priorities, with emphasis on establishing an operational risk framework within NSO, executing operational risk pillars (RCSA, operational incident reporting and tracking, key risk metrics, and reporting), addressing training needs, capturing risk priorities from the NSO leadership, and risk ranking current NSO processes with a calendar for conducting RCSAs.

<u>Email Correspondence: Mr. Price and Ms. Fischman</u>
(JX 47)

On June 16, 2010, Mr. Price provided additional information to Ms. Fischman, who was investigating Mr. Price's May 13, 2010 allegations about Mr. Edwards violating EEO and the company's non-retaliation policy. Preliminarily, Mr. Price observed that he made the following four disclosures on May 13, 2010. First, he conducted an evaluation of the Dallas organization's operational risk function and alignment, which highlighted many areas were the organization was inconsistent with the standard approved by FHFA. Second, he recommended creating a vice president for operational risk position. Third, Mr. Edwards told him not to apply for the new position, which represented retaliation against Mr. Price for "the findings in my study and the requirement to share my findings with key stakeholders across the firm and with FHFA." Fourth, Mr. Edwards didn't want Mr. Price in the position because Mr. Price would do the right thing and be transparent with the operational risk issues in Dallas; instead, Mr. Edwards preferred a non-risk professional that he could manipulate.

In the present letter, Mr. Price wished:

> to emphasize that (1) my Dallas study provided information that I believed, at the time of the study, constituted violations of SEC rules that require Fannie Mae, as a publically traded company to maintain adequate internal controls; (2) [Mr.] Edwards, at the time he told me not to apply for the VP position understood the relationship between the findings in my study and SEC-required internal controls; and (3) in retaliating against me for the findings in my study, [Mr.] Edwards violated Section 806 of the Sarbanes-Oxley Act.

Mr. Price indicated the investigation should examine the "implicit" links between operational risk and SOX compliance that were "inherent" in his Dallas study. To show these links Mr. Price highlighted: a) the 2009 RCSA Mr. Price conducted for Mr. Edwards on the Delegations Exceptions Process which had SOX violations; b) the Dallas SOX documentation and deficiency reports show direct and "indirect" correlations between reporting SOX deficiencies and reporting operational incidents; c) direct correlations exist between RCSA documentation and SOX assessment documentation; d) operational incidents are monitored by SOX personnel for SOX violations; e) SOX process and operational process maps overlap; f) his Dallas assessment recommended the unclear distinctions in roles and responsibilities between operational risk and other disciplines, such as compliance and SOX be addressed immediately; g) Mr. Edwards, who was aware of these unclear distinctions, also certified SOX reports and received monthly operational incident reports; and g) Mr. Edwards recently stated that SOX remediation should be addressed by the vice president of operational risk.

Mr. Price reiterated his concern that in addition to violating the anti-retaliation provision of SOX, Mr. Edwards "discriminated against me because of my race in refusing to interview me for a position for which I am extremely well-qualified. This should be a focus of the current investigation."

Mr. Price also expressed his commitment to Fannie Mae and desire to continue with a career in the organization.

<u>Emails: Ms. Wolf and Mr. Wade – May 2010</u>
(JX 61)

In response to Ms. Wolf's inquiry, on May 21, 2010, Mr. Wade advised that he agreed the vice president for operational risk should be posted in Washington D.C. since Mr. Edwards believed he could not attract a suitable candidate in the local (Dallas) market.

<u>Emails: Mr. McGhee, Mr. Edwards, Mr. Williams, and Ms. Wolf – April 2010</u>
(JX 62, JX 72, JX 74, and JX 75)

In the afternoon of April 12, 2010, Mr. McGhee queried the Credit Division HR partner (Mr. Fred Parker) about operations risk vice president position. After Mr. McGhee was advised that nothing has been yet accomplished since a planning exercise is underway, Mr. McGhee asked Mr. Edwards for help the next day.

In response, on April 13, 2010, Mr. Edwards informed Ms. Wolf that "this is the position we were hoping to fill with Kendra Gray." According to Mr. Edwards, it was a "key position as we look to tighten control and minimize op incidents. She would also help simplify the platform. It will make Rick and FHFA happy too!"

In the early evening of April 13, 2010, Ms. Wolf explained that they were holding off on the position until the workforce plan and assessment, which was attempting to place the "right people in the right seats" for senior management, was completed. However, Ms. Wolf indicated that she would talk to "Mike to see if we can let this one go through."

The next morning, April 14, 2010, Mr. Edwards advised the Fannie Mae CEO, Mr. Michael (Mike) Williams, that he needed the "VP spot for Dallas RCSA platform approved" with a dotted line to Mr. Wade. "Objective is Kendra." The position would take work off "Pat" (Ms. Fulcher). Mr. Edwards indicated that Ms. Wolf intended to talk to Mr. Williams; and Mr. McGhee was also onboard. "It would be great if we could get this one moving."

Mr. Williams replied to Mr. Edwards, with a cc to Ms. Wolf, in the early evening (5:54 p.m.) of April 14, 2010 that if Mr. Wade also agreed, "you should proceed."

Mr. Edwards responded to Mr. Williams less than 30 minutes later (6:16 p.m.), with a cc to Ms. Wolf, that Mr. Wade was on board and in fact "he and his team designed the structure."

Immediately (6:16 p.m.), Ms. Wolf advised Mr. Williams and Mr. Edwards that since Ms. Gray was a director in a different organization, the vice president position would have to be announced and internal candidates must be allowed to apply. Ms. Wolf also intended to inform other individuals that Mr. Williams is approving vice president positions on an individual basis until the workforce review is completed.

Mr. Edwards immediately replied (6:17 p.m.), "Understood." He also informed Mr. McGhee (6:18 p.m.) that Ms. Wolf will post the position.

Later in the evening (8:14 p.m.), with a cc to Mr. Edwards, Mr. Williams asked Ms. Wolf to provide him with a list of officer positions and the priority on each one. He believed from their conversation that the vice president for operational risk was "one of the more pressing matters."

Email: Mr. Edwards and Ms. Gray – April 2010
(JX 67)

On April 22, 2010, just after the announcement of the new vice position, Mr. Edwards emailed Ms. Gray "☺."

Ms. Werner's Notes[13]
(JX 91)

While Mr. Wade wanted both individuals, Mr. Wade selected Mr. Gray first based on competency and leadership. Mr. Price was second. Although he had "far more" technical knowledge, Mr. Price lacked the ability to bring teams together. Mr. Kanefield did not have the technical competency and Ms. Oliver was not competitive.

Mr. Neill made the same choices. However, he had concerns about Ms. Gray regarding the depth of her responses on the technical aspects of the position.

Mr. Bryar noted that Ms. Gray had strengths in ramping up quickly and getting her arms around a job; she was good at delegating. But he wasn't sure how strong Ms. Gray would be in building controls. Mr. Price was clearly a selection for a director position in terms of controls and process.

Mr. Hayward selected Ms. Gray first due to her leadership skills and ability to rapidly get up to speed in the required knowledge. Ms. Oliver was second because she gets "shit" done.

Mr. McGhee picked Ms. Gray first based on her demonstrated ability running HAMP, an operational risk function. There was a gap with the other three applicants, but Mr. Price was second since he understood the job functions.

Ms. Cianci selected Ms. Gray first. Although the least qualified technically, Ms. Gray had the demonstrated ability to learn quickly. Mr. Kanefield was her second choice.

Ms. Muse Evans noted that vice president will have to navigate the FHFA which can be "scary" if the applicant doesn't have depth.

During his preliminary HR interview, Mr. Kanefield emphasized management and operations implementation experience. He had operational risk management experience since he experienced potential exposures everyday. Mr. Kanefield didn't have a Six Sigma black belt but had attended all the classes. His largest span of control had been 15 people.

In her preliminary HR interview, Ms. Oliver had been the contract operations director with 25 direct employees. She took a stepped approach to resolving problems and dealt with operational risk issues in her day-to-day activities. She had a green belt in Six Sigma.

[13]According to Ms. Werner, her notes reference the debriefing sessions that she had with the interviewers, as well as her individual phone conversations with each applicant, TR, p. 888.

During his preliminary HR discussion, Mr. Price had project and programming experience. His operational risk experience occurred from 1997 through 2010. In particular, he was skilled at identifying deficiencies in risk management and infrastructure controls. And, Mr. Price had created the vice president position. He was a black belt in Six Sigma.

In her preliminary HR interview, Ms. Gray noted that she was the director of HAMP with 90 employees. She had operational risk management experience based on her focus in servicing oversight. She did not have any Six Sigma experience.

<u>Email: Ms. Werner, Mr. Edwards, Mr. Wade, and Mr. Parker – May 25, 2010</u>
(JX 96 and JX 97)

On May 25, 2010, Ms. Werner emailed the list of interviewers to Mr. Edwards, Mr. Wade, and Mr. Parker. The list consisted of: Mr. Ed Neill, Mr. Jeff Hayward, Ms. Joy Cianci or Mr. Marcel Bryar, Mr. Wade, Ms. Gwen Muse Evans, and Mr. Edwards. Mr. Wade asked Ms. Werner to add Mr. Ted Carter. Mr. Edwards offered Ms. Irene Topper as a substitute if necessary. Mr. Parker observed that since the position will also support credit operations and technology, Mr. Rich McGhee should be included.

<u>Email: Mr. Price, Ms. Werner, and Ms. Wolf – June 2010</u>
(JX 99)

In a June 1, 2010 email to Ms. Werner, with a copy to Ms. Wolf, Mr. Price indicated that while he was interested in the position, he declined the interview invitation because in his opinion it was premature for Fannie Mae to be conducting interviews while HR, C & E (Compliance and Ethics), and his attorney were still conducting an investigation. He had received no assurances that the process would be fair and equitable.

Ms. Wolf responded that recruiting process was not on hold and being conducted in parallel with the investigation and that if he was interested in the vice president job he needed to interview for the position and cooperate with the recruiting personnel. Otherwise, his failure to cooperate would be considered as a decision not to pursue the officer position.

The next day, June 2, 2010, while still concerned about the process being fair, Mr. Price informed Ms. Wolfe and Ms. Werner that he would interview for the vice president position. As result, he requested another meeting invitation.

<u>Complaint and Memorandum – May 13, 2010</u>
(JX 100)

In the afternoon (3:45 p.m.) of May 13, 2010, Mr. Price emailed a discrimination complaint and supporting memorandum to Ms. Wolfe. Having presented his concerns to the Fannie Mae Ethics team and sought guidance from counsel, Mr. Price requested an investigation into the Mr. Edward's current hiring process for the vice president of Operational Risk in the Dallas organization. Asserting the process was a sham and a waste of taxpayer money, Mr. Price alleged that in an attempt to intimidate and retaliate against Mr. Price due to his evaluation of

Mr. Edwards' organization, Mr. Edwards informed Mr. Price that Ms. Gray would get the position and that Mr. Price did not need to continue with the process since he had made up his mind. Mr. Price asserted that action was "a violation of the Company EEO and non-retaliation policy."

Previously, at Mr. Edwards' request, Mr. Price had conducted an evaluation of the Dallas organization's operational risk function. Before the request, without following the process of having corporate operational risk personnel conduct interviews, the Dallas organization leadership, including Mr. Edwards, hired Mr. John Hurt as the director of operational risk. However, Mr. Hurt did not have the necessary competencies. His underperformance led to Mr. Edwards' request for an evaluation in terms of alignment with FHFA. The study identified many areas that were inconsistent with the standards approved by the Fannie Mae regulator, FHFA. After the study, Mr. Price "received feedback that the study was exhaustive, and comprehensive, and that the Dallas organization plans to implement the recommendations, including creating a Vice President for Operational Risk for the Dallas organization."

After the new position was posted on April 24, 2010, Mr. Price traveled to Dallas on May 12, 2010 to assist Mr. Joe Bryant with an operational risk assessment. While in the Princeton building, "I ran into Mr. Terry. He requested that I come in his office." Mr. Edwards noted that he was aware Mr. Price applied for the vice president position. He added that while Mr. Price was a top candidate, Mr. Edwards was planning on hiring Ms. Gray because he was expanding the position to cover HAMP, an area in which Ms. Gray was already working. As a result, due to her HAMP experience and leadership, Ms. Gray was the top candidate. When Mr. Price responded the he intended to make the interview process competitive, Mr. Edwards again stated that his mind was made up and Ms. Gray was going to get the position. After Mr. Price asked if he should continue with the process, Mr. Edwards said no, his mind was made up. Mr. Edwards then added that he would meet with Mr. Price to talk about other roles. Mr. Price thanked Mr. Edwards for his honesty and left.

On May 13, 2010, Ms. Werner called Mr. Price and surprised him by stating based on a conversation with Mr. Edwards she wanted to know if they still needed to proceed with an interview. After describing his exchange with Mr. Edwards, Mr. Price informed Mr. Werner that he was interested in the position and intended to proceed with the interview. He also observed that Mr. Edwards' behavior was inappropriate. Ms. Werner advised that she would reschedule the interview.

Mr. Price believed Mr. Edwards was also planning on bringing Ms. Gray to Dallas the week of May 17, 2010 to begin her introduction into the organization.

Mr. Price alleged Mr. Edwards' behavior was "a violation of the Company EEO and Non Retaliation Policy." Under the EEO policy, Mr. Edwards was required to: a) evaluate all applicants and employees using the same performance-based and job-related criteria, and b) provide all individuals the same consideration and opportunity to demonstrate potential Mr. Edward's selection of Ms. Gray violates the first provision since all of the candidates, except Ms. Gray, have operational risk experience, which is a requirement for the job. Mr. Edwards violated the second provision by having already made up his mind before allowing the other candidates to demonstrate their potential; he was also giving Ms. Gray an unfair advantage by having her shadow Mr. Edwards in Dallas the week of May 17th. Additionally, the other candidates were unaware that they are interviewing for a position that had already been filled in Mr. Edwards' mind.

Mr. Price also alleged Mr. Edwards behavior violated the non-retaliation policy which prohibits retaliation against an employee who upon reasonable belief raised a compliance and ethics concern. Specifically, since Mr. Price was unaware of other contact with other applicants, Mr. Edwards singled out Mr. Price to advise him not to apply for the vice president position in retaliation for the findings Mr. Price rendered in the Dallas report and the requirement that he share those finding with key stakeholders across Fannie Mae. Mr. Edwards did not want Mr. Price in the position because he would do the right thing and be transparent about operational risk issues in Mr. Edwards' organization. Instead, his actions indicated that he preferred a non-risk professional in the position to facilitate manipulation of that person.

Finally, Mr. Edwards violated his fiduciary duty to do what is best for the company by allowing a sham hiring process to continue. Also, he should not intimidate employees in lower positions. And, Mr. Price was concerned that despite his demonstrated performance which exceeded expectations his action in raising concerns to ethics and HR amounted to career suicide.

In the attached memorandum to Mr. Edwards and Ms. Pat Fulcher, with copies to Mr. Wade and Mr. Carter, dated "August 31, 2010,"[14] Mr. Price presented recommendations regarding NSO Operational Risk Management Organization Structure. Currently, based on organizational charts, only one team was performing operational risk in accordance with the company's operational risk management program. The remaining teams were either performing compliance or quality assurance functions, which included "documenting policies and procedures, control testing in preparation for audit, and coordinating request for information from the corporate Compliance, SOX, Fraud, and Audit teams." Additionally, another team was not being supported by an operational risk function.

A review of the organizational chart revealed that operational risk job title and team structure were inconsistent across the organization, which in turn lead to inconsistent application of operational risk methodologies and tools. And, when operational risk was applied, the entire value stream was not considered which produced a limited view of the risk exposure for the organization. These organizational disconnects started with the hiring process when the position being filled is titled operational risk analyst, while the job requirements relate to compliance or quality assurance functions. As a result,

> Our regulator's expectation for what operational risk management staff is focusing on is not being met . . . Operational risk management is applied inconsistently . . . impeding the ability to implement an overarching strategy for managing operational risk . . . Staff may not have the appropriate skill set to complete operational risk responsibilities . . . Staff confusion [exists] as to whether their position is a risk management or compliance position.

[14]Based on the parties' testimony, this information was presented at the end of March 2010.

The recommended structure separated operational risk and compliance function across the Dallas organization to avoid confusion concerning roles and responsibilities. The current staff of 15 employees would be increased to 18. In addition to several other realignment changes, the new structure created a new position, Vice President of Operational Risk, and a job description was attached. This position would ensure a comprehensive operational risk function and overarching strategy for the Dallas organization.

If the recommended structure was acceptable, a 90-day plan would be reviewed and implemented with Mr. Hurt, and Mr. Wade would participate in interviews and sourcing for the new vice president position.

In response, on May 14, 2010, Ms. Wolfe directed that an investigation be conducted. In the meantime, the recruiting process would continue. She asked to be advised if the investigation developed information that required a change in the approach.

<u>Emails: Ms. Fischman – May 2010</u>
(JX 101 and JX 102)

On May 17, 2010, Ms. Fischman provided an update regarding her investigation of Mr. Price's complaint. In his interview, Mr. Price indicated that he was not making a race discrimination allegation. Instead, he alleged that the hiring process was being conducted unfairly and that he was being treated adversely due to his findings included in his assessment of the operational risk management structure in Mr. Edwards organization. In her interview, Ms. Werner indicated that at the time of the posting, it was common knowledge that Ms. Gray would be the candidate for the role.

On May 19, 2010, Ms. Arrington advised Ms. Fischman that "Nancy" (Ms. Jardini) had discussed Ms. Gray's presence in the Dallas office earlier in the week with Mr. Edwards. She informed Mr. Edwards that at this time, Ms. Gray should not participate in non-HAMP meetings, even as an observer. Ms. Fischman responded with a heads-up that Mr. Wade emphatically disputed Mr. Edwards' statement that he said Mr. Price was unprepared for the job. According to Mr. Wade, he identified Mr. Price to Mr. Edwards as the candidate and told Mr. Edwards that Mr. Price was ready to be an officer. At the same time, Mr. Wade had no indication that Mr. Edwards' decision was retaliatory. And, Mr. Edwards was not upset with Mr. Price's findings in the risk study.

<u>Ms. Fischman's Notes of Mr. Price's Interviews</u>[15]
(JX 104 and JX 122)

During an initial interview on May 17, 2010, Mr. Price noted that for the past year he had worked on Mr. Wade's team and done risk assessments in Dallas. When Mr. Edwards asked about Mr. Hurt, Mr. Price recommended termination; however Mr. Edwards didn't listen to his advice.

[15]Due to the dimness of the copy, portions of the notes, including the date of the second interview, are unreadable. During her testimony, Ms. Fischman indicated that the second interview occurred on July 7, 2010.

In the middle of the study presentation, Ms. Fulcher recommended Mr. Price.

At the start of their conversation, Mr. Edwards told Mr. Price that he was a top candidate. At the end of their meeting, and after Mr. Edwards' comment that he had made up his mind, Mr. Edwards asked for a fist bump, which Mr. Price found degrading. Mr. Price then notified Mr. Wade, who replied that he needed to think about it. Later, Mr. Wade asked Mr. Price what outcome he was looking for; he suggested that Mr. Price talk to Mr. Edwards.

Ms. Gary had a lot of activity in operational risk, related to HAMP, but she is not a risk professional. Mr. Edwards said that he was expanding the position to include HAMP, but HAMP was not in the job position. Mr. Edwards said Ms. Gray had leadership skills and HAMP.

Mr. Wade encouraged Mr. Price to apply.

During the course of a July 7, 2010 interview, Mr. Price indicated that during a RCSA study, 80% of the process is learning the business. He also meets with the SOX team, Compliance team, and Fraud team, creates a process map, re-interviews the teams, validates the process map, and prepares an executive summary.

The Dallas study was not a RCSA. Instead, it was an assessment whether the Dallas organization was functioning correctly. According to Mr. Price, SEC rules relate to internal controls. There is a direct overlap between SOX risk control matrix and risk controls. If the structure is inadequate to manage operational risk, then SOX risk can't be adequately managed and it naturally follows that SOX issues are likely to occur. SOX is a subset of operational risk.

At the time he presented the study, Mr. Price thought the organization had inadequate internal controls that Mr. Edwards would need in order to know what he is signing off on, but Mr. Price did not specifically communicate that to Mr. Edwards or anyone else. Mr. Price never made Mr. Edwards aware of a SOX deficiency that he wasn't previously aware of. He thought Mr. Edwards could have SOX deficiencies but he was not aware of any at the time of the study. Mr. Price was also not aware of actual fraud against the shareholders or intent to defraud the shareholders. Mr. Price thinks the study made Mr. Edwards aware that he couldn't be managed; Mr. Edwards didn't want a competent person in the vice president position.

When the study was presented, Mr. Edwards looked shocked and surprised. He did not express disappointment.

To ensure adequate controls are in place, the right person has to be in place. Mr. Edwards didn't do that by not interviewing Mr. Price, and pushing for someone else who was unqualified and inadequate. Mr. Edwards didn't accept the study's findings by refusing to interview a "top candidate," and going after someone else. Mr. Carter told Mr. Price that Ms. Gray did not have any operational risk experience.

Notes of Mr. Edwards' Interviews[16]
(JX 107, JX 116, and JX 120)

On May 18, 2010, Mr. Edwards reported that Mr. Price came into his office and said that he was interested in the vice president position. Mr. Edwards responded that he was looking at someone else, but they could talk about other positions for him. Mr. Edwards was trying to be straight up with Mr. Price. Mr. Price said this was the first time an executive had been straight up with him. The next thing he knew, Ms. Wolf called and said they needed to run a fair interview process.

Mr. Edwards wanted to fill the vice president position quickly.

On May 24, 2010, in response to Mr. Price's perception of a retaliatory motive, Mr. Edwards responded that "the guy's brains fell out." Having arrived in September 2009, and studying the organization's business processes, Mr. Edward was trying to make some changes. Mr. Wade made the recommendation about hiring a vice president and Mr. Edwards wanted the position filled quickly. Mr. Wade indicated that neither Mr. Bryant nor Mr. Price were ready for the position. Mr. Edwards looked at Ms. Gray who had built out HAMP. He wanted her to stay at Fannie Mae and believed that after she worked in the new position for about 18 months, she could move to another position. Mr. Price was one of the people right at the top, and Mr. Edwards did not want to tell him that Mr. Wade thought he wasn't ready. So, when Mr. Price walked into his office, Mr. Edwards talked to him about his future. Mr. Edwards intended to help him. Mr. Price responded that other executives had not been as honest. Mr. Edwards did not remember Mr. Price being in the room when the study results were discussed.

In regards to the study, Mr. Edwards was concerned whether the eight people Mr. Hurt had brought in were the right individuals for the job.

Mr. Edwards intended to interview candidates with Mr. Wade. If Mr. Wade said no then he wouldn't hire the person. When Mr. Edwards asked Mr. Wade who would be good for the vice president position, Mr. Wade said Mr. Price was not the right guy. Mr. Edwards told Ms. Gray to apply.

On Wednesdays, Mr. Edwards hosts dinners. He had three dinners with Mr. Price who was a great guy.

Ms. Gray had limited risk management experience but she was strong in process, and risk management is not rocket science. Mr. Wade never said Ms. Gray was not the right person for the job. He treated Ms. Gray as a pre-identified candidate and she attended FHFA meetings in Dallas until Nancy (Ms. Jardini) said she had to go home.

Mr. Edwards fist-bumps everyone, including children at church. This is the first time that his integrity has been questioned.

[16]The May 18 and 24, 2010 notes were made by Ms. Fischman. The June 3, 2010 notes were made by Ms. Arrington or Ms. Jardini.

On June 3, 2010, Mr. Edwards indicated he had not engaged in misconduct and was merely trying to fill the vice president position with the best candidate. In his best recollection, Mr. Wade indicated that Mr. Price was not ready for the vice president position. At the same time, Mr. Edwards acknowledged that he could have heard something different. Nevertheless, he came away with the impression that Mr. Wade was not advocating Mr. Price. Mr. Edward told Mr. Price of his status in an effort to be fair and direct with him.

<u>Ms. Fischman's Notes of Ms. Wolf's Interview</u>
(JX 108)

On May 20, 2010, Ms. Wolf reviewed the hiring process. Mr. Wade wrote the position description for the vice president position. Mr. Edwards added HAMP before the email went out but that was not in the position description. He discussed it with Mr. Wade, and Ms. Jardini approved it. Ms. Wolf concluded there was no need to repost the announcement. Ms. Wolf believed Ms. Gray's invitation to the FHFA meeting was inappropriate. Mr. Edward's intention was motivational but he shouldn't have intervened.

<u>Ms. Fischman's Notes of Mr. Wade's Interviews</u>
(JX 112 and JX 119)

On May 18, 2010, Mr. Wade indicated that at the request of Mr. Edwards, he, Mr. Price, and Mr. Carter conducted a review of his organization. The review was not confrontational. They found the need for a person to oversee the three key roles across the organization. After the review, Mr. Wade, Mr. Edwards, and Ms. Fulcher had discussion. Mr. Edwards did not disagree with anything he was just overwhelmed. Mr. Wade recommended the creation of a vice president position and left a draft position description. After Ms. Fulcher left, Mr. Wade responded that the answer was tough because the position is in Dallas, Texas. However, Mr. Price was best equipped to get the program up and running the fastest. At the same time, since Mr. Price had been on Mr. Wade's team for just one year, he didn't have risk management experience. Mr. Wade stated that he could coach Mr. Price and advised Mr. Edwards to talk to Mr. Price and let the process work itself out. Mr. Wade was surprised later when he learned that the position was posted for Washington D.C. He speculated that the position was being reversed engineered for Ms. Gray, especially after Mr. McGhee referenced Ms. Gray starting in the position.

When asked, Mr. Wade told Mr. Edwards that Mr. Price was ready for the position but he recommended that Mr. Edwards make his own assessment since Mr. Wade was not the ultimate decision maker.

Last week, Mr. Price sent Mr. Wade a note indicating that he had an uncomfortable meeting with Mr. Edwards. Mr. Wade advised him to relax and let the process continue. He didn't know the specifics about their meeting. The next email came from Ms. Wolf.

Ms. Gray is great and Mr. Wade had recommended her for the HAMP position. Mr. Wade did not know her business risk background but she's right for the job. Mr. Wade believed Mr. Edwards was relying on Mr. McGhee's familiarity with Ms. Gray.

Mr. Wade believed the study was great for Mr. Edwards because it will make his work easier. Mr. Wade found no indication of retaliation.

On May 25, 2010, Mr. Wade indicated that Mr. Price may have had the risk management experience but he had recently mapped the Dallas risk organization and could get it running fastest. When Mr. Edwards asked if Mr. Price was ready, Mr. Wade said yes.

<u>Ms. Fischman's Notes of Ms. Fulcher's Interviews</u>
(JX 113 and JX 114)

On May 23, 2010, Mr. Fulcher recalled that the group was looking for an internal candidate since the last external hire had not worked out well. When Mr. Edwards asked if Mr. Price was ready, Mr. Wade said yes. She didn't believe Mr. Wade had any reservations. Mr. Edwards liked Mr. Price and looked forward to their dinners.

On May 25, 2010, Ms. Fulcher recalled that when Mr. Edwards asked Mr. Wade if Mr. Price was ready, Mr. Wade answered yes. There were multiple, and ongoing conversations. Initially, there was some consideration of Mr. Bryant to replace Mr. Hurt. Mr. Edwards thought the position was too big for a director and Mr. Wade wanted a study first. After the study, Mr. Edwards asked for any ideas, Mr. Wade mentioned Mr. Price and when asked if he was ready, Mr. Wade said yes.

<u>Ms. Fischman's Notes of Ms. K. Crutcher's Interview</u>
(JX 118)

On May 18, 2010, Ms. Crutcher, who works for Ms. Wolf, indicated that when she contacted Mr. Edwards' assistant to schedule interviews, the assistant noted that Mr. Edwards had a conversation with Mr. Price during which he told Mr. Price that he maybe had someone else in mind for the position.

<u>Ms. Fischman's Notes of Ms. Werner's Interview</u>
(JX 121)

On May 17, 2010, Ms. Werner recalled a conversation with Mr. Price. She started by indicating that she was aware he had spoken with Mr. Edwards. Mr. Price reported that Mr. Edwards said Ms. Gray was going to get the job. He asked Ms. Werner whether Mr. Edwards had seen his resume. Ms. Werner replied yes. Mr. Price told Mr. Edwards that he wanted to give Ms. Gray a run for her money.

Through a series of emails, Ms. Werner understood that Ms. Gray was highly desirable as a candidate. It was common knowledge that she would be a candidate for the position. She was pre-identified before the vice president position was posted. The job was posted because Ms. Gray was not in Mr. Edwards' organization.

Ms. Werner observed that officer selection differs from professional staff selection because the officer evaluation focuses on qualitative abilities in terms of leadership, rather than objectively verifiable quantitative technical qualifications.

Year End Reviews
(JX 124, JX 127, and JX 131)

For 2007, as the Director of Office of Community and Charity Giving, Mr. Price's overall rating was "SE/R+/L+." According to his manager, Mr. Price exceeded expectations in achieving his first goal of mastering the grant-making process and ensuring compliance with requisite standards. In regards to the remaining goals of creating, updating and publishing grant-making policies and procedures, serving as the technology and operations leader, and professional development, Mr. Price significantly exceeded expectations. In terms of improving himself, and the organization, as well as overall leadership skills, Mr. Price's manager gave him a significantly exceeds expectations rating.

In 2008, continuing as the Director of Office of Community and Charity Giving, Mr. Price received an overall rating of "FM+/R+/L." His manager singled Mr. Price out as an "incredible contributor" who provided "great leadership" for his team. In four of his five goals, Mr. Price exceeded expectations, and was noted for setting the standard for career development at Fannie Mae.

In 2009, as the Director of Lean Six Sigma, Mr. Price's overall rating was "exceed expectations." His supervisor noted that Mr. Price "thrived with the challenge of ops risk management" and applying the Lean Six Sigma methodology in Dallas. She also emphasized Mr. Price's ability to build strong relationships with the new management team in Dallas. And, Mr. Price exceeded expectations in learning critical aspects of the business and applying Lean Six Sigma and ops risk tools to improve processes.

Fannie Mae Internal Staffing Corporate Policy
(JX 135)

The January 21, 2010 policy manual for internal staffing policies exists in part to comply with the Equal Employment Opportunity ("EEO") non-discriminatory policy and SOX Compliance 2004-2005 entry-level control deficiency for HR, which cited the need for enhanced policies and procedures. The manual directs managers to follow diversity and equal employment opportunity guidelines.

Fannie Mae Non-Retaliatory Policy
(JX 136)

The March 2007 non-retaliatory policy prohibits retaliation against individuals for engaging in certain acts protected by the Fannie Mae employee Code of Conduct, and applicable law, regulation, and policy. To facilitate open communication, special obligations are placed on managers to foster a culture in which employees are encouraged to raise compliance and ethics concerns without fear of retaliation. Protected acts included reporting a potential wrongdoing or misconduct, including alleging a violation of a law or regulation. One of the external directives that required a need for this policy was SOX.

Fannie Mae Code of Conduct
(JX 137)

The 2008 Fannie Mae Code of Conduct includes a responsibility to raise compliance and ethic concerns. Managers are expected to maintain a workplace in which employees are encouraged to raise compliance and ethics concerns without fear of retaliation.

Investigation Decision
(JX 138)

In the December 2010 Investigation Decision, Ms. Fischman and Mr. Kindred determined that the evidence did not support Mr. Price's allegations. Although Mr. Edwards' actions during the initial stage of the recruitment process undermined the perception of fairness, he did not violate policy.

In report's findings included the following: "Mr. Price acknowledged that Mr. Edwards complimented him on the Memorandum" during the March 22, 2010 meeting. Mr. Price also acknowledged that Mr. Edwards agreed to implement the 90-day plan. Mr. Edwards did not object to the memorandum.

Additionally, when confronted with conflicting recollections about whether Mr. Wade said Mr. Price was not ready for the position, Mr. Edwards indicated that he must not have accurately remembered Mr. Wade's assessment.

Email: Mr. Carter, Mr. Edwards, Mr. Wade, and Mr. McGhee – April 2010
(JX 142)

On April 30, 2010, Mr. Carter forwarded the April Operational Risk Book for HAMP to Mr. Edwards. Mr. Edwards then asked Mr. Wade for his thoughts about putting HAMP within the scope of the vice president position. In response, Mr. Wade raised a concern about maintaining an information barrier between Fannie Mae and HAMP activities. He suggested sending the issue to Compliance. Mr. Edwards then asked if that issue was resolved whether Mr. Wade agreed with the proposal. Mr. Wade answered "absolutely," noting the combination of operational risk oversight under a single vice president would make everyone's life easier.

Email: Ms. Werner and Mr. Edwards - May 2010
(JX 144 and JX 145)

On May 4, 2010, after Ms. Werner informed Mr. Edwards that he had three internal, two external, and one referral candidates, Mr. Edwards replied no to external applicants and asked for the resumes of Mr. Price and Ms. Oliver.

On May 4, 2010, Mr. Edwards asked Ms. Werner to set up interviews with Mr. Price and Ms. Oliver.

Email: Mr. Price and Mr. Wade – May 2010
(JX 151 and JX 356)

On May 12, 2010, Mr. Price advised Mr. Wade that he learned Mr. Edwards was bringing Ms. Gray to Dallas next week to follow him while FHFA was visiting. Mr. Wade replied that Mr. Edwards had told him last week.

Email: Mr. Price and Mr. Edwards – June 2010
(JX 166)

On June 16, 2010, Mr. Price thanked Mr. Edwards for taking the time to interview him. Mr. Price stated, "I really enjoyed our discussion." He hoped to have the opportunity to work with Mr. Edwards in the future and indicated that regardless of the outcome, he "found the process invaluable in my career development. Thanks!" Mr. Edwards replied, "You are very welcome."

Documents on Mr. Price's Fannie Mae Hard Drive
(JX 258)

In a May 17, 2010 "Follow-up" document, Mr. Price alleged that Mr. Edwards and Mr. McGhee were in collusion and attempting to bolster a non-professional, Ms. Gray, for the vice president position by: a) moving its location from Dallas as recommended in the Dallas study to Washington, D.C., which would accommodate Ms. Gray since she lived in Virginia, and b) adding the HAMP function. Mr. Edwards was also planning to bring Ms. Gray to Dallas to sit in meetings, while the other candidates were not offered the same opportunity. According to Mr. Price, they were attempting to manipulate the hiring process by augmenting Ms. Gray due to her lack of operational risk experience, thereby making her more competitive with operational risk professionals, including Mr. Price, who were applying for the job.

In May 17, 2010 memorandum, Mr. Price summarized a May 14, 2010 conversation with Mr. Wade about his decision to contact the Ethics Department, which he believed demonstrated that he could expect strategic discrimination. Mr. Price explained that his purpose in making his complaint was to ensure that Fannie Mae officers respect the company's policies and procedures, as well as the laws and regulations of the U.S. Mr. Wade believed that Mr. Edwards was only going to get a slap on the wrist, while Mr. Price received a black mark. As Mr. Price's sponsor, Mr. Wade also considered Mr. Price's action to be selfish. He advised that he had been looking for other opportunities for Mr. Price and Mr. Price should have played the game; and predicted that Mr. Price would eventually look back and see that he made a $200,000 to $300,000 mistake. Mr. Price indicated to Mr. Wade that the reason for Mr. Edwards' action "has to deal [sic] with my color, his color, and Ted's color." Since the new position involved a key corporate goal, Mr. Edwards "did not want for a black person to be in such a high profile role in the most important part of the Company, particularly in a role that could bring regulatory scrutiny on his organization. He explained that Mr. Edwards and Mr. McGhee were "intimated by our Division since there are blacks in leadership positions." When Mr. Wade firmly disagreed that race was an issue, Mr. Price replied that he was being naïve.

The memorandum continued to summarize two additional encounters with Mr. Wade. On May 17, 2010, Mr. Price again told Mr. Wade that he believed he had done the right thing. Mr. Wade said that if Mr. Price would look at the job description, he would see that he is not qualified. Mr. Price disagreed and reminded Mr. Wade that he was his sponsor and told Mr. Price to apply. When Mr. Wade opined that Mr. Edwards was just being clumsy, Mr. Price replied that Mr. Edwards was purposely discriminating against him. On May 18, 2010, Mr. Wade told Mr. Price that he was disappointed that Mr. Price was not reflecting on the situation and their prior discussion. Mr. Wade again critiqued Mr. Price's approach, warned of a black mark, and that he was not technically qualified for the position. Mr. Wade did not think Mr. Edwards was wrong; instead Mr. Edwards had been clumsy. Mr. Price observed that he initially followed Mr. Wade's advice and stayed calm. However, he was forced to report the issue after his conversation with HR that caused him to believe Mr. Edwards was specifically targeting him.

In a May 18, 2010 memorandum, Mr. Price summarized a series of events which lead to his conclusion that "there is a systematic effort to discriminate against me and the leadership in our division because were are minorities." The events include bolstering Ms. Gray for the vice president position.

In a May 17, 2010 memorandum, Mr. Price summarized the series of events that lead him to conclude that Mr. Edwards took the adverse actions "in retaliation for me conducting a study that highlighted how his organization was not in alignment with the operational risk framework approved by our regulator, the Federal Housing Finance Authority (FHFA)."

In a May 18, 2010 memorandum, Mr. Price proved the basis for his allegation that Mr. Edwards had violated the Office of Federal Housing Enterprise Oversight's ("OFHEO") guidance on operational risk management by manipulating the hiring process and retaliating against him for performing the responsibilities of his job.

In two May 17, 2010 memorandums, seeking an investigation into Mr. Edwards' actions, Mr. Price reviewed the background concerning his study of the Dallas organization and the identification of the misalignment between that organization's operation risk function and the operational risk function mandated by the FHFA. Mr. Price specifically alleged Mr. Edwards violated the company's EEO policy by failing to evaluate all applicants under the same performance and job-related criteria, and providing all applicants the same consideration and opportunity to demonstrate potential. He also violated the non-retaliatory policy which prohibits retaliation against an individual who upon reasonable belief raises a compliance and ethics concern. Finally, Mr. Price expressed a concern that by raising his concern with Ethics and HR that he had committed career suicide; nevertheless, he wanted to ensure that other employees, particularly minorities, did not have the same "dejected" experience.

<u>Email: Mr. Price and Mr. Bryant – January 2010</u>
(JX 260)

On January 6, 2010, Mr. Price informed Mr. Joseph Bryant that Mr. Edwards told him that he was aware of the issue with Mr. Hurt and wanted Mr. Price's opinion on whether he would work out. Mr. Price advised Mr. Edwards that Mr. Hurt would not work out and that NSO was going to end up in trouble. Mr. Price quoted Mr. Edwards as saying that Mr. Price was loved across his organization. Mr. Edwards appreciated his efforts.

<u>Emails: Mr. Price, Mr. Edwards, Mr. Hurt, Ms. Fulcher, and Mr. Wade – February 2010</u>
(JX 262 to JX 264, and JX 266)

On February 7, 2010, 3:01 p.m., Mr. Price sent Mr. Hurt the "RCSA deliverables for NSO." Mr. Price intended to schedule a meeting with Mr. Hurt to provide an overview. According to Mr. Price, Mr. Hurt's next step was to decide on remediation activities. Mr. Hurt was also told to be able to explain his risk management plans and indicate why he accepted, rejected, or deferred the RCSA recommendations.

On February 7, 2010, at 3:56 p.m., upon completion of a RCSA of NSO, CLM, and NUC, Mr. Price sent Mr. Edwards executive summaries, indicated Mr. Hurt and Mr. Bryant were working on remediation plans for 2010 and risk initiatives, advised that Mr. Wade and Mr. Price would reach out to him to provide a progress overview, and thanked Mr. Edwards for dinner. He sent a copy of his email to Mr. Hurt.

On February 8, 2010, 9:54 a.m., Mr. Hurt advised Mr. Edwards that Mr. Price's email was the first time that he had seen the executive summaries. He did not know about any debrief or any required remediation. Mr. Hurt indicated that his team was working on its own detailed risk assessment.

On February 8, 2010, 10:20 a.m., Mr. Hurt forward the executive summaries to Mr. Edwards and proposed that "internal audit should really be performing independent risk assessments as part of their audits," which would minimize the disruption to his business unit.

On February 8, 2010, 7:19 p.m., Mr. Edwards forwarded Mr. Hurt's email to Ms. Fulcher and Ms. Irene Topper, with the comment "have a great night ladies.'

On February 8, 2010, 7:29 p.m., Ms. Fulcher responded that she would let Ms. Topper handle the situation as part of her initiation ritual.

On February 17, 2010, Ms. Fulcher advised Mr. Price, Mr. Hurt, Mr. Bryant, and Mr. Edwards that she would schedule a discussion to ensure coordination and understanding how the RCSA information would be incorporated into their overall risk management plans, and how and what will be tracked and reported at the enterprise level based on the RCSA.

On February 17, 2010, Mr. Edwards responded and reminded Ms. Fulcher to also invite Ms. Topper.

On February 18, 2010, Mr. Edwards informed Mr. Wade and Mr. Price that he was losing patience with "our man in NSO" (Mr. Hurt), and intended to remove him if he was not "completely on the bus now."

<u>Emails: Mr. Hurt and Ms. Fulcher – February 2010</u>
(JX 273)

On February 26, 2010, Mr. Hurt summarized the events and actions that took place during his recent visit to Washington, D.C., which included meetings with Mr. Carter. Mr. Hurt noted that the RCSA process was a minimum standard; he intended to overlay a deep-dive process. Mr. Hurt also confirmed the comments they heard during a February 18, 2010 conference call "were based entirely on what Enterprise Risk thought we MIGHT be doing as opposed to anything we actually have done." He believed these suspicions were "largely the result of ongoing derogatory comments . . . made by Farley Price." Had he not been stunned by the February 18, 2010 comments, he would have reminded Mr. Wade and Mr. Carter that he "was totally on board with the need to develop consistency across the various Fannie Mae businesses."

Ms. Fulcher forwarded Mr. Hurt's email to Mr. Fred Parker "for the files."

<u>Emails – February and March 2010</u>
(JX 274 and JX 287)

On February 26, 2010, Mr. Wade sent Mr. Edwards an overview of the various activities he, Mr. Price, and Mr. Carter intended to accomplish during their March 2010 visit to Dallas.

On February 26, 2010, Mr. Wade also advised Mr. Ken Phelan and Mr. Edward Watson that Mr. Edwards and Mr. Eric Schuppenhauer have decided to remove Mr. Hurt.

On March 5, 2010, Mr. Price forwarded a meeting schedule for March 8, 2010. As an attachment, Mr. Price included the 2008 FHFA Guidance.

<u>NSO Operational Risk Management Team Review</u>
(JX 294, JX 295, JX 296, JX 299, JX 300, JX 301, and JX 455)

In a March 10, 2010 email, upon review of the draft NSO Operational Risk Management Team Review, Mr. Wade advised Mr. Price and Mr. Carter that although he took a shot at editing, the draft required a lot of work. He suggested they both "read this over from an executive management point of view."

After a few iterations and edits, Mr. Price forwarded the Dallas review to Ms. Fulcher and Mr. Edwards on March 11, 2010.

In the study's introduction, over the course of two days consisting of multiple meetings and interviews, and documentation reviews, Mr. Wade's team concluded that the current NSO operational risk management organizational structure and execution model was not sufficient to successfully execute the company's operational risk management program. The structure and composition of the present NSO organization (Risk and Control Team – handles operation risk issues, Servicer Compliance Team – resolves servicer audit findings, and Internal Compliance Team – liaisons with internal/external auditors and SOX with focus on compliance functions), was focused on a typical compliance function model, with little evidence of an operational risk function. Of Mr. Hurt's 19 employees, 13 individuals were explicitly focused on internal or external compliance functions.

The review had several key observations. First, an operational risk function did not exist within NSO because: a) operational risk pillars were not implemented and the team had limited knowledge of the pillars and their functions; b) the team did not have knowledge of the 2008 FHFA guidance on operational risk; and c) the team was not aware of core operational frameworks such as Basel and COSO.

Second, unclear distinction of roles and responsibilities existed across all three teams. In particular, while the organizational chart showed Mr. Hurt's title as Director of Compliance, the HR designation was Director of Operational Risk. Further, in addition to current job descriptions which were inconsistent with HR descriptions for operational risk leads and analysts, and duplicative tasks across the teams, projects and tasks were assigned based on individuals' skill sets rather than based on the team's purpose.

Third, team objectives were based on projects "with little evidence of an overarching strategy that tied the team or their activities together to create synergy across operations." The organization did not have a documented common vision or goal.

Fourth, the organization had inconsistent alignment with corporation function and programs. For example, the organization "seems" aligned with Compliance and Ethics and the Business Resiliency teams. The organization had also developed their own EUCs to: a) track operational incidents versus using ACORD, and b) to manage LARC transactions.

Fifth, questionable leadership practices existed, particularly in the area of information sharing. The information distribution structure was hierarchical with information apparently stopping at Mr. Hurt's level. As a result, the organization was not provided copies of monthly operational risk reports, which included operational incident tracking and a summary of completed RCSAs. Beside being unaware of the recently conducted NSO RCSA, the organization members had many questions, most of which had been covered in the previous weekly operational risk staff meeting which only Mr. Hurt had attended.

As next steps, the team intended to return to Dallas on March 22, 2010 to review a 90-day plan for Mr. Hurt's execution to align NSO with the operational risk program and priorities by: a) establishing an operational risk framework; b) executing operational risk pillars consisting of RCSAs, operational incident tracking and reporting; c) addressing training needs; d) capturing risk priorities for leadership; and, e) risk ranking current processes and creating a 2010 calendar for RCSAs.

<u>Emails: Mr. Wade, Mr. Edwards, and Mr. Price – March 2010</u>
(JX 312)

On March 17, 2010, Mr. Wade advised Mr. Edwards that he intended to conduct a meeting in Washington, D.C. the following week to discuss both the 90-day plan and a revamped operational risk structure for Dallas. Mr. Wade asked Mr. Edwards if he was ok with everyone being present for both meetings. Mr. Edwards replied in the affirmative. And, Mr. Wade forwarded their email exchange to Mr. Price.

<u>NSO Operational Risk Management Organizational Structure Recommendation</u>
(JX 314 and JX 317)

Consistent with other Fannie Mae structures, Mr. Wade's team recommended a new organization structure in which the compliance and risk functions were separate, with the operational risk lead reporting directly to the business unit lead, with dotted line responsibility to the senior vice president for operational risk. At present, only Mr. Bryant's team in REO was performing operational risk in accordance with Fannie Mae's operational risk management program. As previously reviewed, the other teams were focused on compliance and one of Mr. McGhee's teams was not being supported by any operational risk function.

The recommended structure separated operational risk and compliance functions across the Dallas organization to avoid confusion. A new position of vice president for operational risk was created to ensure that a comprehensive operational risk function and overarching strategy will exist. The vice president would have three directors who support NSO, REO/NUC and CLM. Mr. McGhee's team would receive operational risk coverage. And, three additional staff members were to be added.

If approved, the next steps included a review of the 90 day plan, hiring a vice president for operational risk, and a 90 day transition plan for the new structure.

Email: Mr. Wade's assistant – April 2010
(JX 327)

Mr. Wade's assistant scheduled a meeting to brief Mr. Jeffrey Hayward on the implementation of the Dallas study recommendations.

Email News Flash – December 2010
(JX 342)

On December 22, 2010, Fannie Mae surpassed its goal for conducting RCSAs for all high-risk processes.

Dr. Ronald D. Schmidt's Report
(JX 349)

On July 6, 2011, Dr. Schmidt reviewed Dr. Edelman's report (JX 400) and provided his own assessment of the economic damages Mr. Price may have suffered due to non-selection to the vice president position. As a preliminary step, Dr. Schmidt critiqued Dr. Edelman's evaluation on several grounds including his assumption regarding future wages at Fannie Mae (no other opportunities for promotion), discounting which overvalues future earnings, and use of a risk-free rate to discount future earnings. Next, in light of Mr. Price's employment history, Dr. Schmidt opined that if he had been selected for the vice president position, his damages would be limited to three years of differential pay. Further, since the vice president position was never filled, Mr. Price actually suffered no damages. And, in terms of future employment, given Mr. Price's portable skill set, any potential adverse effects associated with the non-promotion would be short-term. Finally, based on multiple considerations, Dr. Schmidt opined that the present value of Mr. Price's lost compensation would be $135,357.00 as of December 1, 2011.

Deposition of Mr. Claude Wade
(JX 370)

In a February 3, 2011 deposition, Mr. Wade explained that the Fannie Mae operational risk framework was based on a hub and spoke model. A small central utility group was responsible for oversight of the framework, tools development, and standardization across the company, while within each business unit, or spoke, a person was responsible for executing the operational risk program in compliance with the framework. At the hub, Mr. Ted Carter was the Director of Framework who was responsible for the execution of the program. In the fall of 2009, Mr. Carter advised that Mr. Hurt in Dallas was not executing according to the program. Following a course of several conversations about Mr. Hurt's noncompliance, Mr. Wade and Mr. Edwards decided to conduct a top to bottom review of the organization.

After seeing Mr. Price in Lean Sigma Six classes, and based on a suggestion, Mr. Wade selected Mr. Price as an upcoming strong person that would be a good addition to his team. Mr. Wade became his mentor. He was extremely bright and a very quick study. In terms of shortfalls, Mr. Price was brash, rough around the edges, and not disciplined in his craft.

Mr. Ted Carter drafted and oversaw the 90-day plan. As to the rest of the report, Mr. Carter and Mr. Price were co-authors. The Dallas study determined that the organization was not executing consistent with the Fannie Mae framework. The people were not well equipped and the organizational structure was not optimal to ensure compliance. Consequently, they made recommendations on a structure that would be more successful going forward, a tiered model of operational risk oversight with three directors reporting to a new vice president in Dallas.

Mr. Wade did not recall any conversation with Mr. Edwards that expanding the vice president position to include HAMP would make Ms. Gray better suited for the position. Mr. Wade's opinion of Ms. Gray was based solely on her interview. She had a lot of experience building teams, and developing groups of people. She was a good study and had knowledge of the business. Ms. Gray was the most polished of all the candidates. She was also the most qualified in terms of getting the function up and running. From a technical perspective, none of the candidates were really on par.

Mr. Wade told Mr. Price to apply. However, he was not technically qualified and Mr. Wade told him so. He believed Mr. Price should take the opportunity to practice interviewing and see what happens. Mr. Wade had conversations where he told Mr. Edwards that Mr. Price could get the function up and running faster than most people because he was familiar with the Dallas organization.

After the presentation of the Dallas report, Mr. Wade, Mr. Fulcher, and Mr. Edwards had a discussion. "During that conversation, Ms. Pat Fulcher asked a question on who would be good for this job, and I responded to that question by saying, 'I think Farley Price could get this up and running faster than anybody else.'"

During the presentation, Mr. Price took the lead. Mr. Edwards' reaction was very quiet. When Mr. Wade asked Mr. Edwards why he was so quiet, Mr. Edwards responded that he was overwhelmed about the amount of stuff that needed to be done. Mr. Edwards absolutely welcomed the report. FHFA encourages self identification over having a third party come in and find the issues. If FHFA had identified the problems, Mr. Edwards would have had a more significant issue.

Mr. Wade never told Mr. Edwards that Mr. Price was unprepared for the job.

When Mr. Price called him about his conversation with Mr. Edwards, Mr. Wade told him not to be distracted by the noise and just go through the process. During his subsequent conversations with Mr. Price about his report to Ethics there was a lot of "ranting" and "raving." Mr. Price said, "I'm going to bring the bricks down around Fannie Mae. I'm going to shake the whole foundation of the place. I've been wronged, and they can't do that to me." Mr. Price did not say that his objective was to ensure Fannie Mae officers respected its policies and procedures, and federal law and regulations. When Mr. Wade asked Mr. Price about his career, Mr. Price responded that he didn't care about his career or the money, he was going to bring Fannie Mae down on Wisconsin Avenue. At some point, Mr. Price indicated that he thought the discrimination was racist. Mr. Wade didn't think it was and explained why. When Mr. Wade mentioned a $200,000 to $300,000 mistake, Mr. Wade meant that Mr. Price had benefited from the same system that he thought had wronged him. Mr. Wade told Mr. Price that there would be other opportunities for officer positions. Mr. Wade doesn't recall mentioning Martin Luther King, but Mr. Price said he was more of a "Malcolm X type cat, and I'm going to bring the whole place down . . . and I'm just going to make sure Kendra (Ms. Gray) doesn't get that job." Mr. Wade did not believe race had anything to do with Mr. Edwards' actions. In Mr. Wade's opinion, Mr. Price started to believe that he was more qualified for the position than he actually was and then it became personal for him.

Most of the operational risk management team was African-American, or Latino. Mr. Wade has never been shut out of decisions about Mr. Edwards' organization because of his race.

After the June 28th discussion of the candidates, a decision was ultimately made that none of the candidates were qualified in that area of operational risk. When it came time for Mr. Neill to rank his candidates, he said he was not ranking any of them because none of them were qualified. Ms. Gray was Mr. Wade's first choice. Mr. Price was his second pick.

Mr. Wade also encouraged Ms. Oliver to apply for the position.

<u>Deposition of Ms. Melissa Werner</u>
(JX 371)

In a February 3, 2011 deposition, Ms. Werner explained that as a senior recruiter she manages the hiring process and identifies internal candidates. Her specific client group is the executive and officer group.

There were five internal candidates for the vice president for operational risk position: Ms. Gray, Mr. Price, Mr. Kanefield, Ms. Oliver, and Mr. McLoughlin. Mr. Price, Ms. Oliver, and Mr. McLoughlin are African-American. Mr. Kanefield and Ms. Gray are white. Subsequently, Mr. McLoughlin was not interviewed. There were discussions between Ms. Werner, Mr. Edwards, and Mr. Hayward that Mr. McLoughlin wasn't actually qualified for the job since most of his experience was in an administrative role, rather than in a business environment, so he was released from the interviews. Ms. Werner advised Mr. McLoughlin about the decision and he accepted it.

In a June 4, 2010 phone conversation with Mr. Price, Ms. Werner walked him through the executive officer hiring process and tried to get a better understanding of his experience as it related to the position, in terms of several criteria: operational management, change management, "splash," and span of control.

The candidates were interviewed by Mr. McGhee, Mr. Neill, Mr. Hayward, Mr. Edwards, Ms. Cianci, Mr. Bryar, Ms. Muse Evans, Mr. Carter, and Mr. Wade. Mr. Neill, Mr. McGhee, Ms. Cianci, Mr. Edwards are white. Mr. Bryar is Hispanic. Mr. Hayward, Mr. Carter, Ms. Muse Evans, and Mr. Wade are black. Mr. Neill, Ms. Cianci, and Mr. Hayward are direct reports to Mr. Edwards. All these individuals were experienced interviewers at the officer level.

The debrief discussion with the interviewers, which lasted about an hour, occurred on June 28, 2010. Ms. Werner didn't recall why her notes about the meeting did not mention Mr. Carter's rankings. He may have been part of the discussion and didn't say anything; but she doesn't recall if he attended the meeting. Mr. Edwards was present for the discussion but he was silent since the purpose of the call was for him to listen to feedback from the other interviewers. Mr. Edwards was the hiring manager, the person that was hiring for the job. His vote was preeminent but not necessarily final since the process by which officers are selected does not leave the hiring authority solely with the hiring manager. Instead, the hiring manager puts "forth the finalists to meet several senior leaders who ultimately have the final authority to hire at the officer level."

During the vice president hiring process, Ms. Werner was not aware that Mr. Price had filed a complaint until he told her on June 4, 2010 that he had retained an attorney.

On the evaluation forms, the term "hold for future" means the candidate is viable for another job or continued evaluation.

Although there were applications from external candidates, Mr. Edwards directed Ms. Werner to focus on internal candidates, which was not unusual.

Ms. Werner recalled that after the feedback was expressed by the interviewers, the group re-evaluated their approach and concluded none of the candidates really met the technical requirements. The discussion then turned to whether the leadership qualification, or the technical requirement, was preeminent. They decided that the technical requirement was "very, very important" and none of the candidates had the requisite technical experience. The group expressed their consensus with that conclusion. Mr. Edwards also expressed his concurrence. Ms. Werner did not document that discussion in her debrief meeting notes. Mr. Edwards did not participate in the discussion. Ms. Werner then advised the candidates that none of them met the technical qualification.

About a week later, Ms. Wolf advised Ms. Werner to contact search firms to look for an external candidate. They presented four or five candidates, and after a few interviews, the search was discontinued by Mr. Edwards in December 2010.

Ms. Werner opened her telephone "kick off" conversation with Mr. Price on May 13, 2010 by saying that she understood he had had a conversation with Mr. Edwards. Mr. Price seemed upset during the call. He was abrupt, unprofessional, and his tone indicated anger or frustration. Later in the conversation, Mr. Price indicated that Mr. Edwards had told him that he was not a candidate for the job. Ms. Werner told Mr. Price that she needed to stop the conversation to figure out what was going on. She then told Ms. Wolf about the phone call and that Mr. Price was agitated. Ms. Wolf replied that she understood and that more was going on than Ms. Werner understood.

In her opinion, Mr. Price was qualified to be interviewed for the position.

The minimum salary for a Fannie Mae vice president is $155,000.00

Designated Excerpts from the Depositions of Mr. Terence Edwards
(JX 372 and JX 376)

In a February 15, 2011 deposition, Mr. Edwards recalled that the evaluation of the Dallas risk team was conducted by Mr. Wade, Mr. Carter, and Mr. Price. The duties of the new vice president position was to ensure they had a tight operational process, and recommend new controls. The dotted line reporting authority to Mr. Wade would help the Dallas organization to stay on the company's path. The evaluation presentation occurred on March 22, 2010.

Mr. Edwards suggested that the vice president position be expanded to include HAMP. He made the suggestion because he had someone in mind to fill the vice president position who had HAMP experience – Ms. Gray. That was the only reason why he suggested the inclusion of HAMP.

"Farley walked into my office," and asked how Mr. Edwards was doing. Mr. Edwards viewed Mr. Price as a member of his team. Mr. Price indicated that he was interested in the vice president position. "I at that time was under the belief that Claude (Mr. Wade) didn't think Farley was ready for the next level." So, rather than tell Mr. Price that he wasn't going to get the job because Mr. Wade didn't think he was ready, Mr. Edwards told Mr. Price that he wasn't going to get the job because another person had other experience. He was trying to let Mr. Price down gently "because his boss told me he's not the right guy for the job." He had a father/son chat and didn't want to deflate his ego. So, Mr. Edwards said Mr. Gray has been identified for the job because she has HAMP experience, so that's why he's not getting the job. The important point is that the conversation would never have happened if Mr. Price had not walked into his office. Mr. Edwards viewed Mr. Price as a friend and had been out to dinner with him. All he was trying to do was have a father/son chat, "and it set us off to where we are today."

When he made the "brains" comment to Ms. Fischman, Mr. Edwards meant that he couldn't "believe Mr. Price was doing this."

Ms. Gray didn't stay for all of the FHFA meeting because Ethics and Compliance asked her to leave. The idea was to give her a feel for what was going on in Dallas.

Mr. Price's complaint was the first time Mr. Edwards' integrity had been questioned. He was angry about the allegation, but it's over. Mr. Price not believing that their conversation was a father/son chat "was offensive. That hurt . . . I'm still hurt to this day."

In an October 5, 2011 deposition, Mr. Edwards recalled that before the final meeting to evaluate all the candidates with the interviewers he told Ms. Wolf or Mr. Parker that he was not going to be part of that process.

Designated Excerpt from the Deposition of Dr. Ronald Schmidt
(JX 374)

In an August 3, 2011 deposition, Dr. Schmidt acknowledged that determining the likelihood of Mr. Price receiving another promotion was outside both his expertise and Dr. Edelman's expertise.

Designated Excerpt from the Second Deposition of Ms. Melissa Werner
(JX 380)

In an October 13, 2011 deposition, Ms. Werner recalled that she learned Mr. Price had had a conversation with Mr. Edwards from Ms. Keisha Crutcher who gave her a heads-up by stating that Mr. Edwards had talked to Mr. Price about the job.

NSO Operational Incidents Status Reports – February 5, 2010
(JX 391)

The report lists 19 operational incidents, with 14 closed, and the remaining five "pending." Impact descriptions included potential MBS trust issue, false error message when servicers inputted correct rates, incomplete analysis reporting, FHFA reporting inconsistencies, inability to reclassify 223 loans, wrong file loaded, use of surrogate data on an entry screen, delay in business processing, possible impact on processing cases, none, and unknown. Eleven of the operational incidents had associated ACORD tracking numbers.[17]

SOX – OIT ("Operational Incident Tracking) Spreadsheets
(JX 392 and JX 393)

The 2009 spreadsheet lists nine operational incidents, each with a maximum potential loss of less than $50,000. The primary risk types range from process/infrastructure to compliance, to client, product, and business services. Seven of the nine operational incidents were "not 302 reportable."

The 2010 spreadsheet contains two operational incidents related with compliance, with a maximum potential loss of less than $50,000. Both incidents were "not 302 reportable." Additionally, one incident was also annotated as "No FR impact."

[17] *See* Ms. Bahr's testimony, TR, pp. 1064-1105.

Dr. Richard B. Edelman's Report
(JX 383, JX 384, and JX 400)

A questionnaire answer asserted that not having a vice president title adversely impacts the ability to secure an officer position at another company.

In his February 6, 2012 valuation of Mr. Price's lost total compensation based on the difference between the vice president compensation and Mr. Price's compensation, Dr. Edelman determined a loss ranging from $1,113,728 to $12,443,170. In calculating these losses, Dr. Edelman considered life and work-life expectancies, the lost total compensation from May 12, 2010 through Mr. Price's work-life expectancy, and present value of the lost total compensation based on a no default, or interest rate risk.

Arbitration Hearing Testimony – Mr. Joseph Bryant[18]
(JX 395)

Mr. Bryant joined Fannie Mae in 2006. For the past three years, he has been a senior project manager in Lean Six Sigma and has a black belt. In May 2010, Mr. Bryant attended a meeting in Dallas with the FHFA for an introduction of the leadership team. It was a very important meeting with the regulator. Ms. Gray was in attendance and Mr. Edwards introduced her as the candidate for the position of vice president of operational risk for credit. He was surprised by the introduction and looked at Ms. Fulcher and Ms. Sharon Parsons, his immediate supervisor. After the meeting, he introduced himself to Ms. Gray and advised that he'd like to arrange a meeting with her. However, by the next session with the FHFA, Ms. Gray had left Dallas.

Arbitration Hearing Testimony – Mr. Terrence Edwards
(JX 395)

During the interviewers' discussion, Mr. Edwards was in Ms. Wolf's office. He didn't say anything. He did not contact any interviewer beforehand to let them know his preference. Due to the strong personalities of the interviewers, he did not need to get involved. Ms. Wolf ran the discussion and no one asked why he didn't join the discussion.

Arbitration Hearing Testimony – Dr. Richard Edelman
(JX 395)

Based on his review of business journals, Dr. Edelman saw no evidence that Fannie Mae will cease to exist. As a result, he ran the economic loss calculation through the end of Mr. Price's work-life.

[18]The arbitration hearing was conducted in December 2011.

Arbitration Hearing Testimony – Mr. Ed Neill
(JX 397)

Either before or after he interviewed the candidates (Mr. Neill can't remember which), Mr. Edwards indicated to Mr. Neill that he believed Ms. Gray was more qualified for the position than the other candidates who were being considered.

While attending a dinner with individuals visiting Dallas from Washington, D.C., Mr. Neill was disappointed with Mr. Price's professionalism at the event.

During the interviewers' discussion, Ms. Wolf asked for interviewer to provide his or her interview results and rankings. For a number of the interviewers, Ms. Gray was the first choice, with Mr. Price being the second choice. Mr. Neill advised that while he also had Ms. Gray ranked first and Mr. Price second, he was not comfortable with either candidate moving forward. Instead, he recommended that the company seek additional candidates. After he made that comment, the "spirit of the phone call changed to an agreement with my suggestion that further candidates be considered for the position." Mr. Neill didn't recall Mr. Edwards saying anything during the conversation.

Arbitration Hearing Testimony – Mr. Jeffrey Hayward
(JX 397)

During his interview with Mr. Price, Mr. Hayward recalled in his mind his initial meeting with Mr. Price, along with Mr. Wade. After just arriving in his new job, he met with them and they started telling him about all the issues in Dallas. "They had stacks of paper," and Mr. Hayward was "a little shell shocked." Significantly, they did not provide any suggestion on how to fix the mess. Instead, it was "Here's all the stuff. It's a problem. Congratulations." Mr. Price never indicated how he could help Mr. Hayward fix the issues.

Arbitration Hearing Testimony – Dr. Ronald Schmidt
(JX 398)

During his analysis, Dr. Schmidt did not look at the description of the position to which Mr. Price applied. He did not review any Fannie Mae vice president position descriptions.

Operating Incident Tracking ("OIT") User Manual
(JX 401 and JX 453)

The October 2008 user manual explains that as the first implemented module of ACORD, OIT was developed to provide an automated and centralized tool to capture, aggregate, and communicate operational incidents detected throughout Fannie Mae.

In the database report for an operational incident, one optional data field is whether the operational incident has an impact on financial reporting.

Risk and Control Self Assessment ("RCSA") Playbook
(JX 403 and JX 452)

The May 2010 RCSA playbook provides guidance for steps that occur when conducting a RCSA. As one of the pillars of operational risk management framework, the RCSA is a standardized methodology for a business unit to identify and assess its operational compliance, technology, business resiliency, and SOX risks. A RCSA facilitates proactive risk management while achieving business goals by identifying key risks and critical controls that would prevent a process from meeting its objective. The RCSA deliverables include a risk and control matrix, a process map (a graphic representation of the steps that comprise a process from start to finish with tags for risks, controls, SOX deficiencies, OITs, and audit findings), risk profile, executive summary, and remediation/resolutions plans.

SOX Change Control Board ("CCB") Charter
(JX 406)

The charter establishes a Section 404 SOX CCB. The SOX team is responsible for reviewing and presenting recommendations to the SOX CCB based on risk assessments and SOX control impact assessments. The SOX team communicates with business process and IT SOX control owners upon designation of FR (financial reporting) status to ensure understanding and implementation of SOX controls. And, the SOX team performs FR EUC risk assessment for all FR EUCs.

The SOX CCB reviews and approves requests to add or remove FR designation for EUC tools and application; maintains an inventory of FR applications and EUCs; reviews planned changes to such applications and EUCs; reviews FR EUC risk assessments; reviews and provides disposition of waiver requests; and, reviews requests to waive the enforcement or implementation of a SOX control. The SOX CCB meets bi-weekly.

Credit Loss Management ("CLM") Business Process RCSA Executive Summary
(JX 407)

The purpose of the January 2009 RCSA was to assess CLM's objective of reducing credit losses by maximizing net proceeds from property dispositions by optimizing timeliness and costs. The key risks involved the current technology environment which was not designed to process forecast volumes and its associated functionality limitations and lack of integration with third party systems, which led to inefficient workaround and manual processes. In terms of inherent risk, the CLM process was ranked high due to the potential risk of financial loss associated with the disposition of Fannie Mae properties. While the preventive and detection controls were ranked effective, they were not also efficient. As a result, the overall residual risk was determined to be medium, which was "slightly above the residual risk expectation levels." As a result, management was advised to closely monitor changes that increase the current residual risk level.

QC Compliance Testing of Loss Mitigation Closed Testing
(JX 409)

The February 2009 compliance test indicates that proper execution of the delegation of authority matrix by the National Servicing Organization should reduce Fannie Mae's credit losses. The tested manual and automatic controls were SOX-related.

Single Family Servicing Management and Loss Mitigation (NSO) Audit
(JX 411)

The June 30, 2009 audit, covering the period of October 2008 thorough April 2009, evaluated the design adequacy and effectiveness of various NSO processes. The audit reviewed operational, compliance, and technology controls, and assessed the SOX risk and control matrix for several key control areas. At the time, NSO was challenged by rapidly changing strategies, significant staff turnover, including the highest levels of the department, and a systems environment that was not designed to handle the present business volumes and work flow demands. While management was aware of the shortfalls, the current staff levels, processes, and controls were inadequate. The audit produced multiple recommendations, which included an updated NSO strategic plan, staffing plan, and systems environment plan. The interim senior vice president was Mr. Eric Schuppenhauer.

In terms of the control environment, several NSO controls were poorly designed. In particular, deficiencies associated with DARTS had "SOX implications" because it was a financial reporting application. Approved delegations of authority had not been fully implemented; the use of waivers for higher levels of workout authority had become routine; several qualify control functions were not properly performed for months; and monitoring of DARTS privileged activities was no longer conducted, while "SOX requirements state that both logging (which is performed) and monitoring (which is not) are required for FR applications."

Credit SOX Deficiencies[19]
(JX 414)

Multiple SOX deficiencies are listed for September to December 2009, January 2010, and May 2010.

On the May 2010 report, Deficiency Number 20454 reports that "an error in the AMP fee payment EUC execution and review process resulted in Fannie Mae sending all payments to one asset management partner (AMP), overpaying by $2.3M." Remediation was in progress and the AMP EUC was being submitted to the SOX CCB and the review control was being revised to ensure that approval occurs both at the aggregate, as well as the underlying support level.[20]

[19]Absent a magnifying glass, the spreadsheet is unreadable.

[20]Viewed under an illuminated x 5 loupe.

Credit SOX Controls
(JX 417)

The document lists 44 SOX controls for business processes with financial statement risks.

Credit Loss Management Business Plan
(JX 419)

The June 2008 CLM business plan indicates that CLM is "uniquely positioned at Fannie Mae to directly and significantly reduce credit losses through management and optimization of REO (Real Estate Owned) sales and NUC (National Underwriting Center) loan repurchases." The business plan focuses in detail on strategies for addressing the anticipated tripling to quadrupling increase in work load volume.

FHFA Report to Congress – 2009
(JX 420)

In its 2009 report to Congress, FHFA presented its findings of the annual examination of Fannie Mae, which had been operating in conservatorship since September 2008, which was designed to preserve and conserve its assets, put the company in a sound and solvent condition, restore confidence in the company, enhance its capacity to fulfill its mission, and mitigate the systemic risk that "contributed directly to instability in financial markets." While important progress had been made during the past year, and the company was actively seeking ways to minimize credit losses, Fannie Mae remained a critical supervisory concern and faced key challenges including credit, operational, and model risk, as well as the challenge of attracting and retaining key talent. And, notably, absent ongoing financial support from the U.S. Department of the Treasury, Fannie Mae would be unable to serve the mortgage market.

In addition to continuing credit losses in 2008, and forecasted losses "yet to be realized," Fannie Mae retained a composite rating of "critical concern" due to operational risk, market risk, and operational challenges. The high level of operational risk was evidenced by operational incidents in mortgage securitization and "also in the areas of financial reporting controls, where an accumulation of errors in estimates of credit losses resulted in a material weakness." High turnover in executive and senior management in critical areas of loss mitigation and asset disposition was a concern; and, the adequacy and level of staffing at the NSO needed to be strengthened. With a stressed credit environment, the risk of funding a $773 billion mortgage portfolio with debt and derivatives was a major concern.

The area of operational risk management also remained a critical concern. "The weak financial condition of the Enterprise and poor credit market created a more complex and riskier operating environment." Fannie Mae "encountered" operational risk incidents and while key milestones were met, progress towards enhancing the control environment was limited. And, Fannie Mae had not yet established an effective operational risk oversight program.

Fannie Mae Article – What is Operational Risk?
(JX 424)

The December 20, 2006 article defines operational risk as the risk of loss from inadequate or failed internal processes, people, or systems, coupled with the risk from external events. Another name for operational risk is execution risk. The most common and significant types of operational risk typically involve breakdowns in internal controls and corporate governance. According to the article, the Fannie Mae SOX effort, which focused on controls and governance related to the financial reporting process, was the "most recognized example of operational risk management . . . SOX and operational risk management go hand-in-hand as key elements of Fannie Mae's operational discipline focus."

Mr. Gerald Thorpe's Report
(JX 444 to JX 456)

Based on his experience, Mr. Thorpe opined that internal control over financial reporting was inherently liked to, and associated with, operational business processes. In 2007, Fannie Mae consolidated the corporate SOX and operational risk functions; while at the division level, risk offices were consolidated under one executive. Even though Fannie Mae has since separated its risk management function into several organizational components, the operational risk management function remained linked organizationally with the SOX compliance function through corporate policy, the assignment of SOX compliance responsibility with the Director of Operational Risk, and SOX CCB. The COSO framework formed the basis for Fannie Mae's SOX compliance program; and Fannie Mae's RCSAs include an evaluation of SOX risks. The SOX team is required to review operational incident reports for the purpose of identifying potential SOX issues. Further, in Fannie Mae's 10-K SEC filing, the president, CEO, Executive Vice President and Deputy CFO recognized that internal controls over financial reporting was related to the company's operational policies, procedures, systems, and authorizations

Mr. Thorpe noted that Dallas report findings that the organization had implemented a separate database to track operational incidents which:

> may have deprived the SOX team of a critical tool for identifying and addressing potential SOX issues . . . If the undisclosed control failure was significant enough to be considered a material weakness . . . the lack of disclosure by the Company could potentially result in regulatory fines and/or the imprisonment of senior management.

In other words, "such deficiencies could have SOX implications if they prevented the SOX team from reviewing operational incidents." By implementing a separate operational incident reporting database, the Dallas organization "circumvented a critical reporting tool that was intended and required to be utilized by the SOX team."

According to the FHFA, the determination of an operational risk rating encompasses accounting, financial reporting, information technology, internal controls, and models. In assessing these operational risk factors, the FHFA includes SOX compliance, as well as timely and accurate financial reporting.

According to its December 2011 publication, the COSO framework is recognized as a leading framework for designing, implementing, and evaluating the effectiveness of internal controls that will enhance the likelihood of achieving the entity's objectives and adapt to changes in the business and operating environment. By definition, an internal control is a process designed to provide reasonable assurance regarding the achievement of: a) effectiveness and efficiency of operations, b) reliability of reporting, and c) compliance with applicable laws and regulations. The reporting objective pertains to the preparation of reliable reports, including internal and external financial reporting. The five components of an internal control, which is part of management's overall responsibility, are control environment, risk assessment, control activities, information and communication, and monitoring activities. An internal control deficiency, or shortcoming, relates to some aspect of the system of internal controls that has the potential to adversely affect the ability of an organization to achieve its objectives. Once a deficiency is identified, "management needs to assess the impact of that deficiency on the effectiveness of entity's system of internal controls. According to the COSO publication, "[n]ot every deficiency will result in a conclusion that an entity does not have an effective system of internal control." Regarding deficiencies in internal control over financial reporting, three tiers of deficiency are commonly used – material deficiency, significant deficiency, and deficiency. A material deficiency involves a situation where there is a "reasonable possibility that a material misstatement of the entity's financial statement will not be prevented, detected, or corrected on a timely basis." Assessing whether a deficiency is material involves consideration of both the likelihood that a potential material misstatement exists which will not be detected in a timely manner; and the magnitude of the potential or actual misstatement in relation to the entity's financial statements. A significant deficiency is less severe than a material deficiency, but yet of sufficient importance to bring to attention of executive management, or board of directors.

In order to identify which internal controls to test, an auditor must obtain a sufficient understanding of the points within a process where misstatements could occur.

Fannie Mae SOX Overall Program Policy
(JX 450)

The SOX Overall Program Policy ("Policy") provides a framework for management and organization of the SOX requirements set out in Section 404 of SOX. Fannie Mae is committed to maintaining an overall SOX model that provides guidance and standards to ensure adherence to SOX. One of the Policy's objectives it to "improve and maintain internal controls over financial reporting." The Policy "applies to all business areas within Fannie Mae that have been identified as being in-scope for SOX purposes and includes business process controls . . . [and] End-User Computing." The Policy establishes a SOX team that is responsible for the overall administration of Fannie Mae's SOX program. One of the industry standards that created a need for the Policy is COSO.

CLM Operational Risk Book – April 2010
(JX 461 and JX 466)

The book notes that six new operational incidents were reported during February 2010. Three incidents had a potential loss of $50,000. Incident #2041, which was classified as a significant incident, involved a misrouted claim denial letter from the FDIC, which lead to Fannie Mae missing the 60-day window to file a lawsuit against the claim for a potential recovery of $240,000,000. Incident # 1959 arose due to improper invoicing of accounts with “an REO Gram penalty” due to a report logic error; the amount of potential loss was under review. Incident #2036 involved a third party receiving $2,339,571 for an AMP setup fee in error; the funds were recovered.

Designated Excerpts from the Depositions of Mr. Joseph Bryant
(JX 466)

In a February 27, 2012 deposition, Mr. Bryant indicated that the Operational Risk Book (JX 461) is used to inform the executive committee of all activities within the operational risk environment of CLM. It communicated operational incidents, the status of the operational risk program, and progress toward FHFA goals and objectives. Operational incidents are by definition a failure of a process or control within the organization that led to either a financial loss or reputational impact. OIT means operational incident tracking.

In March 2010, an outsourcing contractor AMP advised that they had received a check for about $2 million, while other AMPs were indicating that they had not been paid. Upon investigation, an error was discovered in a spreadsheet calculation that led to one provider being paid an aggregate fee for all the AMPs. That is, rather than each AMP vendor receiving a fee payment, one payment went to one AMP. This incorrect payment was an operational incident. The internal controls for this process were weak. Specifically, although the fee calculations were very complex, they only had one person who knew how the process worked and that person became overwhelmed by the process’ complexity and overall volume. The AMP returned the check which was voided, thereby recovering the funds. When Mr. Bryant reported the operational incident, the SOX organization deemed it to be a SOX deficiency; however it was characterized as “low level.” The SOX monthly report contains this operational incident as #20454. Mr. Bryant is pretty sure Mr. Edwards would have been aware of the incident because Mr. Bryant provided updates to Mr. Neill, and Mr. Edwards had access to monthly reports. And, “we would notify Terry via email if we had a significant incident,” which is anything over $50,000.

Arbitration Hearing Testimony – Ms. Christine Wolf
(JX 471)

Ms. Wolf has been in HR for about 30 years, with the past 12 years in management. She first worked at Fannie Mae in 2002 for a couple of years. In either 2008 or 2009, she returned to Fannie Mae as senior vice president for HR. She again left Fannie Mae in the spring of 2011.

Ms. Wolf first became aware of the new vice president position when Mr. Edwards sent her an email indicating that he wanted to create the position. Mr. Wade was also involved in the creation of the position. Ms. Wolf advised Mr. Wade that the overall qualification requirement was "very, very excessive" because the position required a lot of years in a field that had not yet been developed. As a result, she believed they were going to find the job hard to fill. However, Mr. Wade disagreed and indicated that the requirement was necessary. According to Mr. Wade, if they didn't find someone totally qualified, they could get a person with enough background to enable development into the role.

Initially, Ms. Wolf believed they were going to try and fill the position internally, within the organization, without posting the position, which had happened before in the credit organization. In that process, people are usually recommended for the position. During that period, due to huge volume issues, the credit organization was finding people in other parts of the organization with relevant experience that Mr. Edwards moved into positions without job postings.

Mr. Fred Parker was the managing HR individual for the credit organization.

When Ms. Wolf received Mr. Edwards' April 13, 2010 email about hoping to fill the new vice president position with Ms. Gray, Ms. Wolf replied that HR was going through an overall workforce planning assessment which included executive positions and completion would take awhile. However, she offered to talk to Mr. Williams since Mr. Edwards stated the need was pressing.

Because Mr. Edwards referenced Ms. Gray, Ms. Wolf also advised Mr. Edwards that they would need to announce the position, which would be competitively sourced. The position was a new vice president position while the other positions previously filled without announcements either were not officer positions or involved a person who was already an officer. At that time, Ms. Gray was only at the director level. If an officer position is to be filled from the director level, then Ms. Wolf would send an announcement to the directors and officers to solicit people who are qualified. A recruiter would also be assigned to handle the process. The candidates would go through an interview process, and then an identified candidate would go through an interview with a panel of senior executive vice presidents. The final step was an interview with Ms. Wolf and Mr. Williams, the CEO. Ms. Wolf is aware of cases where a finalist candidate was not selected for an officer position after the panel interview. In that case, the position is put on hold or they try to figure out another way to handle the position.

For the vice president of operational risk, no one got to the panel interview stage because there was no one qualified for the job.

In the promotion process of selecting an individual from a director-level job for an officer-level position, leadership is a critical consideration. The selected person "takes on a whole different level of responsibility."

Before her discussion with Mr. Wade, Ms. Wolf had seen earlier versions of the vice president position description. The April 20, 2010 finalized version contained the same overall qualification, the 10 to 15 years in operational risk management, that she had previously discussed with Mr. Wade. In her opinion, the operational risk function was fairly new and she didn't know if it had existed for 10 or 15 years. The additional qualifications, including Six Sigma experience, large scale project experience, were a lot to ask for one person to possess. Nevertheless, she agreed with the position description because Mr. Wade believed the requirements were what they needed and he wanted to try and find someone that possessed as many of the qualifications as possible. He wanted to post the job and then interview applicants who may not be exact matches. Mr. Wade wanted to go out strong and see what they could get.

Between the time of the original position description/posting, and her email to the directors and officers announcing the position, the location for the vice president position was moved from Dallas to Washington, D.C. because there are more people in Fannie Mae working in Washington D.C., and many individuals were already managing parts of the Dallas organization from Washington, D.C. Ms. Wolf did not know whether the original position description and announcement where updated to reflect the change in location.

Ms. Werner handled the initial screening process. After the applicants identified themselves, then Ms. Werner asked for a resume or something that reflected their background and experience. She then scheduled interviews.

Ms. Wolf believed Mr. Wade, Mr. Edwards, and Ms. Werner worked together in selecting the interviewers; Mr. Parker may also have been involved.

At the completion of the interviews, Ms. Wolf conducted a conference call to discuss feedback from the interviewers about the candidates.

When Ms. Werner contacted Mr. Price, he told her that he wanted to withdraw from the process because they weren't following procedures and Mr. Edwards had told him that he wasn't going to be selected for the position. As a result, Ms. Wolf forwarded Mr. Price's complaint to Ms. Leslie Arrington in Fannie Mae investigations. She also notified Mr. Edwards that she had forwarded Mr. Price's complaint. Within a couple days of Ms. Werner's email about Mr. Price, Ms. Wolf also talked to Mr. Edwards and stated that it was wrong of him to intervene in the process that early. She stressed that they needed to go through a competitive process and he needed to cooperate, and back off. Mr. Edwards agreed. He explained that he didn't mean anything and was just trying to give Mr. Price career advice. He said they should absolutely go through the process and he would follow her advice.

After Ms. Wolf responded to Mr. Price, he changed his mind and indicated that he wanted to interview for the position.

Ms. Wolf arranged the interviewer conference call in part because of Mr. Price's complaint. She wanted to make sure the selection process had been followed and she wanted to hear the feedback. Most of the interviewers participated; Ms. Muse Evans was not able to make the call. She was uncertain whether Mr. Carter participated.

At the start of the call, Ms. Wolf asked for the interviewers' feedback and requested that they rank the candidates. She asked for rankings in order to determine whether they had a consensus or very different opinions.

Ms. Wolf recalled that the interviewers had a concern about Mr. Kanefield's breadth of management because he hadn't managed a large group. Ms. Gray had a breadth of management and experience bringing people together; she was a strong manager which was a critical skill. Mr. Price had some lack in scope of management responsibility. Ms. Wolf didn't recall the comments about Ms. Oliver. The operational risk backgrounds of all the candidates was "limited across the board." Near the end of the discussion, Mr. Neill summarized that is sounded like none of the candidates was qualified for the job. Everyone agreed with his conclusion. Mr. Edwards did not say anything during the group conversation. Later, through an email, Ms. Muse Evans agreed that the candidates did not meet the qualifications, especially 10 to 15 years of operational risk experience.

In a subsequent conversation with Mr. Edwards and Ms. Werner, they reached a conclusion that none of the candidates were qualified for the position and they should go outside and seek an external candidate. Mr. Edwards was concerned about the additional delay but he understood the need to continue. Ultimately, the position was never filled.

After Ms. Wolf received the investigation results, she did nothing further because she had already talked to Mr. Edwards and given him feedback in real time about the inappropriateness of his actions.

Ms. Wolf would have been concerned if Mr. Edwards told her that he recommended HAMP for the vice president position solely to bolster Ms. Gray's candidacy.

Prior to the interviewer discussion, Ms. Wolf advised Mr. Edwards that he should just listen to the interviewers' feedback and not participate in the process or conversation.

Ms. Wolf didn't recall whether the investigation report was referred specifically to anyone in HR. Mr. Edwards only received counseling from Ms. Wolf. She had more than one conversation about this issue with Mr. Edwards.

Mr. Wade told Ms. Wolf that Mr. Price was qualified for the position.

Mr. Price's Interrogatory Answers
(JX 472)

On January 12, 2012, through counsel, Mr. Price answered interrogatories. For multiple reasons, Mr. Price believed Fannie Mae would have hired Ms. Gray absent his complaint. Mr. Edward's intention to hire Ms. Gray was well known at Fannie Mae. Through numerous actions he demonstrated his intention to hire Ms. Gray, including inviting her to attend the FHFA meeting, and adding HAMP to the position description. The interviewer debriefing occurred because Mr. Price filed his complaint. Absent the complaint, Mr. Edwards would have been the ultimate decision maker.

Mr. Wade recommended Mr. Price when Mr. Edwards asked for a person for the position. He also told Mr. Price to apply. He subsequently told Mr. Edwards that Mr. Price was best equipped to get the new position up and running. And, Mr. Wade refuted Mr. Edwards' representation that he had told Mr. Edwards that Mr. Price was unprepared for the job.

Fannie Mae is an SEC registrant subject to Section 13 of the Security and Exchange Act, which under Section 13(b)(2)(B) requires an issuer to devise and maintain a system of internal controls sufficient to provide assurance that transactions are properly authorized and recorded, with accountability for assets. The Dallas NSO report identified multiple deficiencies in operational risk management organization, which implicitly disclosed the operational risk management function in Dallas did not provide adequate operational risk support for the business unit, which meant the work they produced could not be relied upon by Fannie Mae's SOX function, which in turn violated Section 13(b)(2)(B).

Additionally, one of the specific findings, was the Dallas operational risk team's use of a separate data base to track operational incidents deprived the SOX team of a critical tool for identifying and addressing potential SOX deficiencies.

And, the 90-day plan demonstrated the Dallas organization did not possess the requisite operational risk support necessary to produce work product that could be relied upon by Fannie Mae in the execution of its responsibilities under SOX.

Mr. Edwards was aware that Mr. Price had engaged in a protected activity because the Dallas study disclosed a violation of Section 13(b)(B)(2). Mr. Edwards was overwhelmed and displeased with the report. He was concerned that he could not manipulate Mr. Price, and as a result he preferred Ms. Gray.

The RCSA conducted by Mr. Price demonstrated to Mr. Edwards that Mr. Price had an understanding of a significant number of internal control environment deficiencies, which have SOX implications.

The AMP setup fee deficiency shows how operational risk incidents and SOX deficiencies overlap.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Credibility Determinations

Mr. Terence Edwards

During the course of his testimony, based on his demeanor and generally earnest answers, I found Mr. Terence Edwards to be a credible witness. And while he is involved in several testimonial disputes which I will have to subsequently resolve, I do not consider his recollections to be a product of fabrication. At the same time, one particular dispute that might lead to an adverse credibility determination warrants a closer examination.

During the initial investigation by Fannie Mae into Mr. Price's complaint about Mr. Edwards' actions concerning the selection for the new vice president position, Mr. Edwards indicated that following the March 22, 2010 Dallas report meeting Mr. Wade told him that Mr. Price was not ready for the recommended vice president position. However, also during the Fannie Mae inquiry, Mr. Wade emphatically disputed Mr. Edwards' statement that he said Mr. Price was unprepared for the job. To the contrary, Mr. Wade told Mr. Edwards that Mr. Price was best equipped to get the vice president position up and running the fastest. Additionally, Ms. Fulcher who heard the exchange, stated that when Mr. Edwards asked if Mr. Price was ready, Mr. Wade said yes.

Certainly, upon initial consideration, the consensus of Mr. Wade and Ms. Fulcher clearly calls into question the integrity of Mr. Edwards' assertion. However, according to Mr. Wade, he also told Mr. Edwards during same exchange that Mr. Price did not have requisite risk management experience since he had only been on Mr. Wade's team for one year, and thus Mr. Wade would have to continue to coach him; he also advised Mr. Edwards to talk to Mr. Price and make his own assessment, and indicated there were other people he might want to consider for the position. Additionally, in a subsequent investigation interview, and during the hearing before me, Mr. Edwards indicated that while he didn't recall Mr. Wade's exact words, and his recollection may be inaccurate, he nevertheless came away from their conversation with the impression that Mr. Wade was not advocating Mr. Price's selection because Mr. Price wasn't ready. Further, several months later, Mr. Wade did not select Mr. Price as his first choice to fill the vice president position, and later told Mr. Price that in terms of the position description, he didn't think Mr. Price was qualified. Consequently, based on the entirety of the March 22, 2010 conversation, and Mr. Wade's subsequent actions, I conclude that at worst Mr. Edwards imprecisely presented his impression of their conversation as Mr. Wade's spoken words, which does not warrant an adverse credibility determination.

Mr. Farley Price

Likewise, while also involved in numerous testimonial disputes, Mr. Price testified with a generally sincere and straightforward demeanor, and usually provided unequivocal and direct answers under questioning. Yet, in one incidence, a sufficient inconsistency exists that raises some concern about the integrity of his representations about his subjective beliefs.

In his May 13, 2010 discrimination complaint, Mr. Price alleged that Mr. Edwards violated the company's EEO policy because: a) he was not using the same performance-based or job-related criteria for all the applicants since he was bypassing the operational risk experience requirement, and b) he had not permitted all individuals the same consideration and opportunity to demonstrate potential because he had already chosen Ms. Gray. Mr. Price asserted that Edwards singled him out for this intimidation and retaliation, also in violation of Fannie Mae's anti-retaliation policy, due to Mr. Price's evaluation of Mr. Edwards' organization which led to Mr. Edwards' efforts to keep Mr. Price from getting the new vice president position because he knew Mr. Price would be transparent and do the right thing, when instead Mr. Edwards wanted a non-professional in the position who could be manipulated.

However, in a conversation that occurred the very next day, May 14, 2010, with Mr. Wade, who was the team leader for the Dallas report, Mr. Price described a completely different basis for Mr. Edwards' purported intimidation and discrimination. In Mr. Price's nearly contemporaneous memorandum of their conversation, Mr. Price asserted the reason for Mr. Edwards' actions was Mr. Price's race. From Mr. Price's perspective, since the new position involved a key corporate goal, Mr. Edwards did not want "a black person to be in such a high profile role in the most important part of the Company, particularly in a role that could bring regulatory scrutiny on his organization." Consistent with Mr. Price's memorandum, Mr. Wade recalled that during this conversation Mr. Price was "ranting and raving" about bringing the bricks down around Fannie Mae due to Mr. Edwards' alleged racial discrimination.

Other Witnesses

Based on their demeanor, generally direct answers, and lack of equivocation, I considered their sworn testimony probative on multiple issues in this case. Any associated testimonial disputes are attributable to incomplete, or failed, recollections rather than purposeful inaccuracies.

Testimonial and Evidence Conflicts

On a few occasions, the record contains varied recollections of conversations and events. To the extent that a conflict in testimony, or other inconsistency, requires a detailed assessment and resolution, I will render a discussion of the issue in ***[[italics]]***.

Stipulations of Fact

On March 13, 2012, the parties stipulated to the following facts: a) internal control over financial reporting is linked to, and associated with, some operational business processes; b) the operational risk management function sometimes interacts with the SOX compliance function; and c) the SOX compliance team reviews reported operational incidents. TR, p. 358, and JX 470.

Specific Findings

1991 through 2003

Mr. Price earns a Bachelor of Arts, Finance, in 1991; a Master of Science, Computer Systems Management, in 1995; and a Juris Doctorate in 2001.

After teaching public school following college graduation, Mr. Price works as a network administrator for about two years from about 1993 to 1994. In 1994 and 1995, Mr. Price works as a contract project manager for a migration of technology project. From 1997 to 2000, Mr. Price is employed by Price Waterhouse as the managing director of technology, responsible for the technology structure supporting about 3,600 consultants, with associated exposure to the people and process aspects of operational risk. Following a subsequent merger, Mr. Price becomes directly responsible for designing business processes.

From 2000 to 2001, Mr. Price works for Hitachi Innovative Solutions Consulting as a project management consultant. After Mr. Price helps Carey International avoid an investment in an unstable company, he obtains a permanent position as the director of business process engineering and program management for Carey International. In that capacity from 2001 to 2004, Mr. Price is introduced to a risk reduction methodology called "Six Sigma," and becomes responsible for reengineering the company's accounts receivable, collection, and billing processes.

2004 to 2007

Fannie Mae is a publically traded financial organization with the mission of expanding affordable housing and bringing global capital to local communities in order to serve the U.S. housing market.

The Fannie Mae Foundation hires Mr. Price as the managing director of technology and business operations, providing oversight for the payable process and supporting the financial systems.

Over the course of the next three years, Mr. Price first helps close the Fannie Mae Foundation, being responsible for document retention necessary for accountability. He then becomes the Director of Grants and Business Operations, setting up the program, implementing centralized grant-making system, and managing general operations.

In 2007, Mr. Price receives the highest possible ratings for all three components of the annual appraisal: overall performance, results, and leadership. In terms of self-improvement and overall leadership skills, Mr. Price significantly exceeds expectations.

2008

Fannie Mae's operational risk framework is based on a hub and spoke model. A small central utility group is responsible for oversight of the framework, tools development, and standardization across the company, while within each business unit, or spoke, a person is responsible for executing the operational risk program in compliance with the framework. At the hub, Mr. Ted Carter serves as the Director of Framework and is responsible for the execution of the program.

Fannie Mae has hundreds of SOX-relevant controls across its financial reporting streams. A SOX control is a control that is in place to help prevent, or detect, material misstatements in financial statements. The Fannie Mae SOX team conducts quarterly reviews of Fannie Mae's operational incidents tracking system, ACORD, for SOX implications. The associated spreadsheets indicate whether the operation incident is a SOX reportable incident, and such incidents are given a deficiency number.

For his work as Director, Office of Community and Charitable Giving, Mr. Price receives the highest rating for overall performance and is noted for being an incredible contributor and superb performer.

Later in the year, having become certified in Lean Six Sigma, Mr. Price is chosen for rotation into the Enterprise Risk Division, headed by Mr. Claude Wade, as the Director of Lean Six Sigma.

In September 2008, due to the recent crisis in the financial markets attributable to the collapse of the housing market and associated foreclosed high-risk mortgages, and since the federal government is a principal stakeholder, Fannie Mae is placed in conservatorship under FHFA as its conservator and regulator, to preserve and conserve its assets and return Fannie Mae to a solvent condition.

2009

The Dallas credit division had three primary function areas: customer service, owned real estate obtained from foreclosures, and national underwriting, and includes the NSO, which works with banks to collect money on behalf of Fannie Mae. The NSO has two support functions, CLM responsible for claims associated with maintenance of owned real estate, and REO, which handled special accounting. The credit section has 44 SOX controls for business processes with financial statement risks. At this time, the volume of foreclosure transactions, are straining the infrastructure of Fannie Mae, and the Dallas Credit Division's foreclosure transactions have increased from 200 to 30,000. HAMP is also located with the Dallas business unit.

March 2009 Mr. Wade, senior vice president for the Fannie Mae operational risk strategy division, selects Mr. Price to be a permanent member of the Enterprise Risk Division in Washington D.C. as the Director of Lean Six Sigma, under the direct supervision of Ms. Ana Lapera, with ancillary supervision by Wade when Mr. Price periodically performs operational risk activities in the Dallas credit division. Mr. Wade becomes Mr. Price's mentor.

In his director capacity, Mr. Price conducts RCSAs, a formalized, multi-step risk control assessment process, which identifies and assesses operational risks associated with people, processes, and technology in terms of overall risk exposure. Through the course of several stages, a detailed risk profile is produced with individual risk scores based on the effectiveness of the existing controls, both SOX and non-SOX, thereby providing an understanding of the degree of risk. Upon completion, the RCSA includes an executive summary, plans for remediation and resolution of the identified issues.

During a RCSA, several types of controls are identified, relating to regulatory compliance, SOX, and operations. A control is an activity, function, or mechanism used to minimize a risk event. Controls are evaluated in terms of effectiveness and efficiency. The RCSA playbook provides guidance for steps that occur when conducting a RCSA. As one of the pillars of operational risk management framework, the RCSA is a standardized methodology for a business unit to identify and assess its operational compliance, technology, business resiliency, and SOX risks. A RCSA facilitates proactive risk management while achieving business goals by identifying key risks and critical controls that would prevent a process from meeting its objective. The RCSA deliverables include a risk and control matrix, a process map (a graphic representation of the steps that comprise a process from start to finish with tags for risks, controls, SOX deficiencies, OITs, and audit findings), risk profile, executive summary, and remediation/resolutions plans.

Summer 2009 Due to the increase of issues in the Dallas credit division associated with the mortgage foreclosure crisis, Mr. Price begins to work periodically in Dallas on operational risk activities. Mr. Price starts two small RCSAs, including one study related to a SOX deficiency in the loss mitigation section identified in a recent audit in which SOX issues associated with severe staffing shortages and poorly designed control were found.

September 2009 Mr. Terry Edwards becomes the executive vice president of the Dallas credit division, which has 2,000 people working in the credit loss operation. His number one priority is to mitigate credit losses at the start of the housing crisis. As he attempts to address this issue in his first six months, Mr. Edwards is not aware of all the issues in the Dallas organization, including issues related to operational incidents. Mr. Edwards brings Mr. Jeff Hayward and Ms. Gwen Muse Evans onto his team without posting the jobs and or going through a competitive process.

October 2009 Due to his previous work in Dallas, Mr. Price is assigned to conduct an "end-to-end" RCSA for the Dallas organization. Mr. Edwards asks him to evaluate the entire organization end-to-end rather than focus deeply on one division because Mr. Edwards had just arrived in the division. Mr. Price makes several trips to Dallas. Mr. Edwards and Mr. Price occasionally have dinner together and on one occasion share a ride to the airport.

Fall of 2009 In his year-end appraisal for 2009, as the Director of Lean Six Sigma, Mr. Price's overall rating is "exceeds expectations." In particular, his supervisor emphasizes Mr. Price's ability to build strong relationships with the new management team in Dallas.

2010

January 2010 Mr. Price completes the end-to-end RCSA and the smaller RCSA for the Dallas organization. In the end-to-end RCSA, Mr. Price notes that the organization's current technology was not designed to process the significant increase in volume. He sets up a remediation action schedule. Mr. Price also concludes that Mr. John Hurt is not operating within Fannie Mae's enterprise risk framework, and advises Mr. Edwards that Mr. Hurt is not going to work out and that NSO is going to end up in trouble. Eventually, after advising Mr. Wade and Mr. Price, Mr. Edwards takes action to remove Mr. Hurt.

February 7, 2010 Mr. Price emails Mr. Hurt the "RCSA deliverables for NSO," and expresses an intention to schedule a meeting with Mr. Hurt to provide an overview. He informs Mr. Hurt that the next step is to decide on remediation activities, and advises that he should be prepared to explain why he accepts, rejects, or will defer the RCSA recommendations. With a copy to Mr. Hurt, Mr. Price also sends Mr. Edwards a copy of the executive summary, advises that he and Mr. Wade will subsequently provide a progress overview, and thanks Mr. Edwards for dinner.

February 8, 2010 Mr. Hurt informs Mr. Edwards that Mr. Price's email was the first time that he had seen the executive summary. He was unaware of any debrief or required remediation. Mr. Hurt indicates that his team was working on its own detailed risk assessment.

Mr. Edwards forwards Mr. Hurt's email to Ms. Fulcher to handle the situation.

Mid-February 2010 Mr. Edwards and Ms. Fulcher receive feedback that NSO isn't meeting standards in following new, prescribed enterprise risk framework that Fannie Mae had introduced. The organization was managing operational risk, but not necessarily by the new framework. After a discussion about the issue and the talent of the individuals that Mr. Hurt had hired, Mr. Edwards and Ms. Fulcher conclude that they need to know the gaps in their program, the mismatches in talents and responsibilities, and whether the people in Mr. Hurt's organization should remain. They also desire recommendations for corrective actions. As a result, Mr. Edwards reaches out to Mr. Wade and requests that the Dallas organization's operational risk function be evaluated.

February 17, 2010 Ms. Fulcher advises Mr. Price, Mr. Hurt, Mr. Bryant, and Mr. Edwards that she would schedule a discussion to ensure coordination and understanding how the RCSA information would be incorporated into their overall risk management plans, and how and what will be tracked and reported at the enterprise level based on the RCSA.

February 18, 2010 Mr. Edwards informs Mr. Wade and Mr. Price that he is losing patience with "our man in NSO" (Mr. Hurt), and intends to remove him if he was not "completely on the bus now."

February 26, 2010 Mr. Hurt summarizes for Ms. Fulcher the events and actions that took place during his recent visit to Washington, D.C., which included meetings with Mr. Carter. Mr. Hurt maintains the RCSA process is a minimum standard and expresses an intention to overlay a "deep-dive process." Mr. Hurt refutes comments about his organization that were based on what they might be doing rather than what they actually had done. He attributes the derogatory information to Mr. Price. And, Mr. Hurst states that had he not been stunned by the recent comments, he would have reminded Mr. Wade and Mr. Carter that he "was totally on board with the need to develop consistency across the various Fannie Mae businesses."

Mr. Wade sends Mr. Edwards an overview of the various activities that he, Mr. Price, and Mr. Carter intend to accomplish during their March 2010 visit to Dallas.

Mr. Wade advises Mr. Ken Phelan and Mr. Edward Watson that Mr. Edwards and Mr. Eric Schuppenhauer have decided to remove Mr. Hurt.

Week of March 8, 2010 Mr. Price returns to Dallas with Mr. Wade and Mr. Carter to conduct an onsite evaluation of the NSO, which is consistent with an FHFA initiative to increase operational risk oversight. They conduct several meetings with members of the management and compliance teams, and the team leads to gather information. Mr. Carter and Mr. Price prepare the main body of the report and review of the organizational structure, with Mr. Wade providing executive editing. Mr. Carter drafts a 90-day plan.

March 11, 2010 Mr. Price sends Ms. Fulcher and Mr. Edwards the main body of the Dallas report. Overall, the report concludes the NSO organization does not have an operational risk structure to effectively execute Fannie Mae's operation risk program, in part because the organization operates separately, and no single person is looking at the business process across the entire organization, such that the claim and disbursement teams are not supported by an operational risk function. In particular, most of the NSO employees are focused on internal or external compliance functions; operational risk pillars are not implemented; the NSO team demonstrates little knowledge of their functions and an unawareness of core operational risk frameworks; and, the NSO has developed their own EUC for tracking operational incidents versus the corporate tool ACORD. Nevertheless, the NSO team has the right skills to do the job. As next steps, Mr. Wade's team intends to make a presentation on March 22, 2010 to review a 90-day plan for Mr. Hurt's execution to align NSO with the operational risk program and priorities by: a) establishing an operational risk framework; b) executing operational risk pillars consisting of RCSAs, and operational incident tracking and reporting; c) addressing training needs; d) capturing risk priorities for leadership; and, e) risk-ranking current processes and creating a 2010 calendar for RCSAs.

March 17, 2010 Mr. Wade advises Mr. Edwards that he intends to conduct the Dallas report meeting in Washington, D.C. the following week to discuss both the 90-day plan and a revamped operational risk structure for Dallas. Mr. Wade asks Mr. Edwards if it's ok to have everyone present for both meetings. Mr. Edwards replies in the affirmative. And, Mr. Wade forwards their email exchange to Mr. Price.

March 22, 2010 ***[[****In addition to the testimonial conflict previously discussed in my credibility determinations, two additional factual disputes arise concerning the Dallas report meeting. First, according to Mr. Price, when he announced the vice president position recommendation, Ms. Fulcher interrupted and said he should take the position. Yet, during the hearing, Ms. Fulcher didn't recall thinking Mr. Price would be the appropriate person for the vice president job, or interrupting Mr. Price to make that statement. Ms. Fulcher also testified that after the March 22, 2010 presentation and Mr. Wade's departure, she told Mr. Edwards that Mr. Price was not the right person for the job, which diminishes the likelihood that she recommended Mr. Price during the presentation. Similarly, Mr. Edwards didn't recall Ms. Fulcher interrupting the presentation. And, according to Mr. Wade, after the presentation, Ms. Fulcher specifically asked who would be a good candidate for the vice president position which would be redundant if she had already suggested Mr. Price by interrupting the presentation.*

Upon consideration of the disparate recollections, the combination of the testimony and statements of Ms. Fulcher, Mr. Edwards, and Mr. Wade sufficiently outweighs Mr. Price's testimony, such that I am unable to conclude that Ms. Fulcher interrupted the proceedings with a suggestion that Mr. Price take the vice president position.

Second, the parties who attended the presentation had different views concerning Mr. Edwards' reaction to the report. According to Mr. Edwards, while he didn't verbally express his reactions, he was "mostly happy" with the report because he didn't have to let 12 people go, and accepted the report. During the Fannie Mae investigation, Mr. Price indicated that Mr. Edwards looked shocked and surprised; but at the same time, he did not express any disappointment. In his interrogatory answer, Mr. Price indicated that Mr. Edwards was overwhelmed and displeased with the report. On the other hand, Mr. Price subsequently acknowledged that at the end of Mr. Price's presentation, Mr. Edwards complimented him for the report and raised no objections. At the hearing, Ms. Fulcher did not recall Mr. Edwards saying that he was overwhelmed. During the Fannie Mae investigation, Mr. Wade recalled that Mr. Edwards was very receptive to the Dallas report, which Mr. Wade believed was understandable since the report would enable Mr. Edwards to proactively address the issues and implement a mitigation plan. In his deposition, Mr. Wade recalled that when he asked Mr. Edwards why he was being so quiet, Mr. Edwards replied that he was overwhelmed by the amount of actions that needed to be taken. However, according to Mr. Wade, Mr. Edwards was not upset with the report.

*In attempting to objectively blend the diverse recollections, I find that while Mr. Edwards may have been overwhelmed by the amount of actions that needed to be taken, he was very receptive to the report, relieved that he did not have to fire 12 employees, and complimented Mr. Price on the presentation.****]]***

Mr. Wade, Mr. Ted Carter, and Mr. Price present the evaluation report for the Dallas NSO to Mr. Edwards and Ms. Fulcher. Mr. Wade opens the meeting with a recap of the team's tasks. Mr. Price reviews the contents of the report and presents their review of the NSO's operational risk management structure, which noted that only one team was performing operational risk in accordance with the company's operational risk management program. The remaining teams were either performing compliance or quality assurance functions, and one team was not being supported by an operational risk function. Additionally, job titles and team structures were inconsistent across the organization, which in turn led to inconsistent application of operational risk methodologies and tools. The review recommended separating operational risk and compliance function across the Dallas organization to avoid confusion concerning roles and responsibilities. In addition to several other realignment changes, the recommended structure included a new position, vice president of operational risk, which would ensure a comprehensive operational risk function and overarching strategy for the Dallas organization. At the end of Mr. Price's presentation, having been overwhelmed by the amount of actions that need to be taken, yet very receptive to the report, and relieved that he doesn't have to let 12 employees go, Mr. Edwards says, "good study."

Mr. Carter then presents the 90-day plan, which sets out a timeline for actions to "to align the Dallas Operational Risk Team with the Company's Operational Risk Management Program," which includes realignment, operational risk training, and end-to-end monitoring and management, with emphasis on executing RCSAs in accordance with the playbook and executing to OIT program in accordance with OIT standards.

After Mr. Carter and Mr. Price depart, Mr. Wade and Mr. Edwards have a discussion about the recommended vice president position. When Mr. Edwards asks if Mr. Wade has any suggestions, Mr. Wade responds that Mr. Price is best equipped to get the vice president position up and running the fastest. Mr. Wade adds that Mr. Price does not have requisite risk management experience since he had only been on Mr. Wade's team for one year, and thus Mr. Wade would have to continue to coach him. He advises Mr. Edwards to talk to Mr. Price and make his own assessment, and notes there were other people he might want to consider for the position. Mr. Edwards leaves the meeting with the impression that Mr. Wade hasn't advocated for Mr. Price's selection because Mr. Price isn't ready.

Later, Mr. Edwards and Ms. Fulcher discuss the report and he gives her responsibility for implementing the recommendations. He asks her about Mr. Wade's comments concerning Mr. Price. Ms. Fulcher responds that she isn't sure about Mr. Price as a candidate and states that he isn't their guy. In her mind, Ms. Fulcher is concerned because she didn't know what had transpired between Mr. Hurt and Mr. Price; additionally, while Mr. Price's RCSA had been a very high-level report, it wasn't actionable and didn't provide any direction.

<u>March 29, 2010</u> Mr. Wade informs Mr. Price that Mr. Edwards has accepted the Dallas report and its recommendations.

<u>Beginning of April 2010</u> Based on his impression that Mr. Wade has indicated that Mr. Price is not ready for the position, Mr. Edwards looks to recruit Ms. Gray who has built out HAMP, believing it would be more efficient and a cost savings to have one person do both roles. He also wants her to make sure she stays with Fannie Mae. When considering Ms. Gray to fill the proposed vice president position, based on his prior experience as a private company CEO, and his recent selections of Mr. Hayward and Ms. Muse Evans, Mr. Edwards does not realize that the new vice president position will have be posted, and the selection must be competitive, if a director will be promoted to the position.

Mr. Jeffrey Hayward replaces Mr. Hurt as the head of the NSO.

April 13, 2010 Due to an inquiry from Mr. McGhee about the proposed vice president for operational risk position, Mr. Edwards asks by email for Ms. Wolfe's assistance and expresses an intention to fill the vice president position with Ms. Gray because she would help simplify the platform, help tighten controls, and minimize operational incidents, which in turn would please FHFA.

Ms. Wolf responds that while HR is holding off on the position until the workforce plan and assessment for senior management is completed she will talk with the Fannie Mae CEO, Mr. Williams, about getting the position filled now.

April 14, 2010 In the morning, Mr. Edwards advises Mr. Williams that he needs the vice president for operational risk, hopes to fill the position with Ms. Gray, and states that it would be "great" if they could get the position approved. He adds that Ms. Wolfe will talk to Mr. Williams about the position.

In the evening, Mr. Williams replies, with a copy to Ms. Wolf, that if Mr. Wade agrees Mr. Edwards should proceed. Shortly thereafter, Mr. Edwards responds that Mr. Wade is onboard since his team designed the position.

Immediately following this latest email, because the vice president officer position is going to be filled from the director level, which requires competitive sourcing, Ms. Wolfe advises Mr. Williams and Mr. Edwards that since Ms. Gray is a director, the vice president position will have to be announced and internal candidates must be allowed to apply.

Mr. Edwards replies that he understands and then informs Mr. McGhee that Ms. Wolf will post the position.

April 20, 2010 Ms. Wolf sends Ms. Werner the position description for the vice president of operational risk management.

April 22, 2010 Ms. Werner announces the new vice president position located in Washington, D.C. by email. The position description lists several qualification requisites, including "extensive" understanding of operational risk management and risk origination functions, "proven leadership skills with focus on ability to manage and influence," experience leading large scale projects through an entire lifecycle, proven relationship management skills, proved experience in successfully interacting with FHFA or other external regulators/stakeholders, 10 to 15 years of operational risk management-related experience, and Six Sigma Black Belt certification at least within one year. All qualified internal and external candidates were encouraged to apply no later than Friday, April 30, 2010.

Fannie Mae's selection process for promotion to vice president, which is an executive position, has several steps. First, applicants are preliminarily screened for threshold qualifications. Second, individuals who pass the initial assessment are then interviewed by the internal stakeholder(s). Third, the person selected by the stakeholder(s) goes before a panel of three senior executives from outside the functional area to which the person is being promoted for a one hour interview. The executive panel focuses on leadership qualities, people management skills, general self-awareness, and the ability to work within the Fannie Mae cultural style. If the executive panel endorses a candidate for hire, the recommendation goes to Mr. Tim Mayopoulos, the head of HR, and then to Mr. Williams (CEO), who has the final approval authority. On occasion, a candidate will not be endorsed by the executive interview panel.

Mr. Price's salary is about $160,000; the expected salary for the new vice president for operational risk is above $200,000, while the minimum salary for a vice president is $155,000.

Less than an hour after the vice president for operational risk position is announced to executives and directors by email on April 22, 2010, believing the interview process will be good practice for Mr. Price, Mr. Wade encourages Mr. Price to apply for the vice president position.

On the same day, Mr. Edwards forwards the announcement to Ms. Gray with a smiley face emoticon. Ms. Gray interprets the email as "here's an opportunity."

<u>Later in April 2010</u> Mr. Price applies for the position within two or three days after the announcement. In response, the HR recruiter schedules an interview with her in May. Mr. Price tells Mr. Wade. Mr. Wade responds that he is happy about Mr. Price's decision. They discuss the interview process for a vice president position, which consisted of a series of interviews, with Mr. Williams making the final decision.

Familiar with Ms. Gray's work, Mr. McGhee encourages her to apply and indicates that the vice president position will be an appropriate next career move for her.

Ms. Gray applies and attaches her resume, which highlights the following professional experience: Director, HAMP and Operations, and Director, Servicer Oversight - Single Family Operations (March 2008 to present); Manager, Financial Services, Bearing Point (May 2004 to February 2008); Director, B2B Integrations, BCE Emergis (September 2002 to April 2004); Technical Assistant up to Senior Project Manager, Electronic Mortgages Services, Freddie Mac (July 1995 to September 2002); and Computer Systems Analyst, CACI, Inc. (July 1992 to June 1995). Ms. Gray emphasizes that in her present position, she works regularly with regulators and oversight groups, including FHA. On several occasions, she has established, lead, and developed new organizations. Her education includes a BS in Management Science.

Ms. Oliver, Mr. Kanefield, and Mr. McLoughlin also apply for the position. However, although initially scheduled for interviews, based on feedback from Mr. Edwards and Mr. Hayward that Mr. McLoughlin's experience is administrative, rather than business processes, Mr. McLoughlin is determined not to be sufficiently qualified by HR and released from the interview schedule.

April 30, 2010 After he receives the April Operational Risk Book for HAMP, Mr. Edwards asks Mr. Wade for his thoughts about putting HAMP within the scope of the vice president position. In response, Mr. Wade raises a concern about maintaining an information barrier between Fannie Mae and HAMP activities and suggests sending the issue to Compliance. Mr. Edwards then inquires whether Mr. Wade would agree with the proposal if that issue were resolved. Mr. Wade responds, "absolutely," noting the combination of operational risk oversight under a single vice president would make everyone's life easier. Based on that email exchange, Mr. Edwards believes Mr. Wade is totally supportive.

After Ms. Jardini approves the addition of HAMP responsibilities for the new vice president position, Ms. Wolfe determines there was no need to repost the job announcement.

May 4, 2010 After Ms. Werner informs Mr. Edwards that he has three internal, two external, and one referral candidates, Mr. Edwards replies "no" to external applicants, requests the resumes of Mr. Price and Ms. Oliver, and asks Ms. Werner to set up interviews with Mr. Price and Ms. Oliver.

May 12, 2010 ***[[****While Mr. Price and Mr. Edwards generally agree about the contents of their conversation in Mr. Edwards' office, they have starkly different versions on how that discussion was initiated. Although that factual detail is less important than the discussion itself, I will nevertheless address the testimonial conflict.*

In his initial complaint, Mr. Price stated that while in Dallas to assist with an assessment he "ran" into Mr. Edwards who requested that he come into his office and indicated that he was aware that Mr. Price had applied for the vice president position. At the hearing, Mr. Price testified that as Mr. Price was standing three offices away, Mr. Edwards called Mr. Price into his office in a loud voice, and stated that he was aware Mr. Price had applied for the position. Mr. Price did not barge into the office.

During the Fannie Mae investigation, Mr. Edwards stated that Mr. Price came into his office and said that he was interested in the position. In a 2012 deposition, Mr. Edwards stated Mr. Price walked into his office and asked how Mr. Edwards was doing. Mr. Edwards testified that Mr. Price "came rolling into my office," and they started talking; he did not call Mr. Price into his office and would not have initiated the conversation.

*Since both participants seem fairly certain of their credible, respective recollections about how the May 12, 2010 conversation began, standing alone, I would be unable to favor one version over the other. However, Mr. Price's testimony is supported by his contemporaneous email that he sent Mr. Wade following the meeting in which stated that Mr. Edwards had asked him into his office and indicated that he was aware Mr. Price had applied for the vice president position. Consequently, I consider Mr. Price's description to be more accurate.****]]***

Mr. Price arrives in Dallas to assist Mr. Joe Bryant with an operational risk assessment. Mr. Edwards asks Mr. Price to come into his office and indicates that he is aware Mr. Price has applied for the vice president position. After Mr. Price confirms that he has applied, Mr. Edwards states that while Mr. Price is a top candidate, he is planning to hire Ms. Gray because he is expanding the position to include HAMP, an area in which Ms. Gray was already working. Mr. Edwards explains that based on her HAMP experience and leadership skills, she is the top candidate. Mr. Price replies that he intends to make the interview process competitive. Mr. Edwards indicates that his mind is made up about Ms. Gray. Mr. Price asks if he should continue the process. Mr. Edwards responds that he is telling Mr. Price that he has already made up his mind but they should still meet to discuss other opportunities for Mr. Price. Mr. Price thanks Mr. Edwards for his candor and honesty. In response, Mr. Edwards stands up and extends his arm and hand for a fist bump. Mr. Price returns the fist bump and leaves.

Mr. Price is very upset as he leaves the meeting, and feels intimidated. Mr. Edwards believes that he has had a "father-son chat" in which he has let Mr. Price down without bruising his ego by candidly telling him that he is not going to be selected but still has other opportunities.[21]

After this conversation, Mr. Price emails Mr. Wade advising that Mr. Edwards "asked me to come into his office," and then told Mr. Price that while he was aware Mr. Price was applying for the position, he had made up his mind and was going to hire Ms. Gray. When Mr. Price asked if he should withdraw from the interview process, Mr. Edwards indicated that he may as well since his mind was made up, but they should still meet to discuss future opportunities. Mr. Price then asks Mr. Wade, "Should I formally withdraw?" Mr. Wade responds that he wants to think about the situation and will get back to Mr. Price. In the meantime, he recommends that Mr. Price stay relaxed and not do anything. Mr. Price replies that he has already reached out to receive external guidance.

In the evening, Mr. Price informs Mr. Wade that he has learned Mr. Edwards intends to invite Ms. Gray to Dallas the following week while the FHFA is visiting to expose her to the environment and see if she is a good fit.

May 13, 2010 When Ms. Crutcher contacts Mr. Edwards' office to arrange interviews for the vice president candidates, Mr. Edwards' assistant, Ms. Kite, indicates that Mr. Edwards already had an interview with Mr. Price about the position, and Mr. Price will no longer be interviewing since Mr. Edwards had someone else in mind. Ms. Crutcher tells Ms. Werner about the conversation.

After waiting some time to hear about his interviews, Mr. Price leaves a message for the HR representative. When Ms. Werner returns his call, she indicates that based on a conversation with Mr. Edwards' office she understood that Mr. Price wasn't going to move forward with the interview process. Surprised, Mr. Price replies that the statement is incorrect, asks if he is still a candidate, indicates that he expects to be interviewed as scheduled, and states that he wants to give Ms. Gray a run for her money. Ms. Werner replies that he is still a candidate. Mr. Price also informs her that Mr. Edwards' conversation with him was inappropriate. Ms. Werner responds that she needs to get additional information and follow up with him.

[21] Subsequently, after Mr. Price made his May 13, 2010 complaint, Mr. Edwards became aware that Mr. Price did not hold the same belief about the nature of their May 12, 2010 conversation.

Mr. Price emails Mr. Wade and indicates that at the start of his conversation with an HR representative about his interview, she surprised him by stating that based on a discussion with Mr. Edwards she understood Mr. Price was no longer interested in the position. Mr. Price apologizes to Mr. Wade but states "I have to act without receiving your guidance but that was the last straw." He doesn't care about the money and believes that his career at Fannie Mae will be ruined, but "it is a bigger issue" for him and his family.

Ms. Werner advises Ms. Wolf of the call, and indicates that Mr. Price seemed agitated as the result of talking to Mr. Edwards, and asked if he was still a candidate for the job. Ms. Wolf states that she would follow-up on it.

Later the same day, Mr. Price files an internal complaint with the Ethics and HR departments, and sends a copy to Mr. Wade. He requests an investigation into the hiring process for the vice president of operational risk because at present the process was a sham and a waste of taxpayer dollars. Specifically, prior to the human resources hiring process taking place, Mr. Edwards informed Mr. Price that Ms. Gray was going to get the position and he need not continue the interview process because Mr. Edwards had already made up his mind. Mr. Price believes Mr. Edwards is trying to intimidate and retaliate against him for his recent evaluation of his organization. Mr. Price attached the main body of the Dallas report to the complaint. He opines that Mr. Edwards' actions are in violation of the company's EEO and non-retaliation policies. Mr. Price asserts that he has been singled out by Mr. Edwards because to Mr. Price's knowledge Mr. Edwards had not reached out to any other candidate to advise them not to interview, or inform them that Ms. Gray is going to get the position. He believes that Mr. Edwards did not want him to get the position because he knew Mr. Price would do the right thing and be transparent with the operation risk issues in Mr. Edwards' organization. Instead, Mr. Edwards appears to want a non-professional who can be manipulated.

<u>May 14, 2010</u> In response to Mr. Price's complaint, Ms. Wolfe directs that an investigation be conducted. However, she also decides that the selection process will continue.

Mr. Price has a conversation with Mr. Wade about his decision to contact the Ethics department, which Mr. Price believes will lead to "strategic discrimination." Mr. Wade opines that Mr. Edwards is only going to get a slap on the wrist, while Mr. Price will receive a black mark. As Mr. Price's sponsor, Mr. Wade also considers Mr. Price's action to be selfish, notes that he had been looking for other opportunities for Mr. Price, indicates Mr. Price should have played the game; and he predicts that Mr. Price will eventually look back and see that he made a \$200,000 to \$300,000 mistake. In a manner that Mr. Wade perceives as "ranting" and "raving," Mr. Prices states, "I'm going to bring the bricks down around Fannie Mae. I'm going to shake the whole foundation of the place. I've been wronged, and they can't do that to me." When Mr. Wade asks Mr. Price about his career, Mr. Price responds that he doesn't care about his career or the money, he is going to bring Fannie Mae down on Wisconsin Avenue. Mr. Price asserts that the reason for Mr. Edwards' action has to do "with my color, his color, and Ted's color." From his perspective, since the new position involved a key corporate goal, Mr. Edwards "did not want for a black person to be in such a high profile role in the most important part of the Company, particularly in a role that could bring regulatory scrutiny on his organization." He further explains that Mr. Edwards is "intimidated by our Division since there are blacks in leadership positions." Claiming to be a "Malcolm X type cat," Mr. Price indicates that "I'm going to bring the whole place down . . . and I'm just going to make sure Kendra (Ms. Gray) doesn't get that job." Mr. Wade firmly disagrees that race is an issue. Mr. Price replies that Mr. Wade is being naïve.

<u>May 17, 2010</u> Mr. Price has another conversation with Mr. Wade and reasserts that he has done the right thing. Mr. Wade replies that if he looks at the job description, he will see that he is not qualified. Disagreeing Mr. Price reminds Mr. Wade that he told Mr. Price to apply. Mr. Wade opines that Mr. Edwards is just being clumsy. Mr. Wade states that after his conversation with Mr. Edwards, Mr. Price should have taken him to dinner. Mr. Price disagrees and maintains that Mr. Edwards is purposely discriminating against him.

<u>May 18, 2010</u> Mr. Wade expresses his disappointment with Mr. Price for not reflecting on the situation and their prior discussions. He again critiques Mr. Price's approach, warns of a black mark, and asserts that he is not technically qualified for the position. Mr. Wade does not think Mr. Edward did anything wrong, he was just being clumsy. Mr. Price observes that he initially followed Mr. Wade's advice and stayed calm. However, he was forced to report the issue after his conversation with HR which led him to believe Mr. Edwards was specifically targeting him.

<u>Week of May 17, 2010</u> Mr. Edwards invites Ms. Gray to attend meetings in the Dallas office with the FHFA. He wants her to understand the travel demands associated with the new vice president position and to get sense of what is going on in Dallas. Members of the FHFA visit the Dallas credit division, attend meetings/presentations, and are introduced to the leadership team of the credit organization. Mr. Edwards introduces Ms. Gray as a candidate for the vice president of operational risk. During the course of the week Ms. Jardini advises Mr. Edwards that Ms. Gray should not participate in non-HAMP meetings, even as an observer. Mr. Edwards' assistant, Ms. Jan Kite, informs Ms. Gray that she can not continue to attend the meetings. Ms. Gray then leaves Dallas.

Ms. Muse Evans also attends the meetings and later asks Mr. Edwards why Ms. Gray was present since she did not have a formal role. Mr. Edwards replies that he is trying to give Ms. Gray a better view of the Dallas organization. In response to Ms. Muse Evans' specific question, Mr. Edwards states that he hasn't already made a selection and was letting the objective process play itself out. He advises her to continue the process, giving each candidate a fair chance.

Ms. Wolfe talks to Mr. Edwards about Mr. Price's complaint, and advises him that he was wrong to intervene in the process that early. She stresses that they needed to go through a competitive process, and he needs to cooperate and back off. Mr. Edwards replies that he will comply and explains that he didn't mean anything and was just trying to give Mr. Price career advice. He agrees they should go through the process and he states that he will follow her advice.

<u>May 21, 2010</u> Mr. Wade informs Ms. Wolf that he agrees the vice president for operational risk should be posted in Washington D.C. since Mr. Edwards believes he can not attract a suitable candidate in the local (Dallas) market.

May 24, 2010 During an investigation interview, believing that Mr. Price's reaction isn't logical, Mr. Edwards states that in regards to Mr. Price's complaint, "the guy's brains fell out."

May 25, 2010 Ms. Werner sends out the list of the nine interviewers for the vice president position: Mr. Neill, Mr. Hayward, Ms. Cianci, Mr. Bryar, Mr. Wade, Ms. Muse Evans, Mr. Edwards, Mr. Carter, and Mr. McGhee.

Late May 2010 Mr. Wade informs Ms. Muse Evans that his team, which includes Mr. Price, conducted an in-depth review of the Dallas organization for operational risk management and identified a number of issues which may have included a mail room incident.

Ms. Werner conducts preliminary qualification interviews with all four applicants. Ms. Gray, Mr. Kanefield, Mr. Price, and Ms. Cianci are then scheduled for formal interviews.

June 1, 2010 Mr. Price declines an interview invitation on the basis that it's improper to continue with the selection process while his complaint is under investigation.

Ms. Wolfe responds that the recruiting process will not be placed on hold and Mr. Price should cooperate and be interviewed if he is still interested in the vice president position. His failure to cooperate will be considered as a decision not to pursue the officer position.

June 2, 2010 While expressing continued concern about the fairness of the selection process, Mr. Price requests another interview invitation.

June 8 to June 15, 2010 The four candidates are interviewed by Mr. Edwards, Mr. Wade, Mr. Neill, Ms. Muse Evans, Ms. Cianci, Mr. McGhee, Mr. Carter, Mr. Bryar, and Mr. Hayward,

During their 30-minute interview, Mr. Edwards tells Mr. Price that he still wants Ms. Gray. He discusses his expectations for the vice president position, which includes handling SOX issues. Mr. Edwards does not ask Mr. Price about his qualifications or years of experience.

At the conclusion of candidates' interviews, Mr. Wade selects Ms. Gray as his first choice based on her competency and leadership. The most polished of the candidates, she has knowledge of the business, a lot of experience building teams and developing groups of people, and is a good study. Mr. Price is his second choice. Although Mr. Price has "far more" technical knowledge, he is still not technically qualified and lacks the ability to bring teams together. Mr. Kanefield does not have the technical competency and Ms. Oliver is not competitive.

At the conclusion of the interviews, Mr. Neill concludes that none of the candidates have the requisite qualifications. Nevertheless, he selects Ms. Gray first despite the lack of depth of her responses concerning the technical aspects of the position; he also has reservations about her willingness to confront significant issues head-on and present bad new to Mr. Edwards. While Mr. Price is his second choice, Mr. Neill has concerns about his maturity for the job.

Following the interviews, and having assessed the candidates in terms of leadership skill, ability to deal with strong personalities, ability to build something new, knowledge and competency in operational risk, and knowledge of the Dallas operation, Ms. Muse Evans selects Ms. Oliver. Mr. Price is a close second. Ms. Gray is third and Mr. Kanefield is fourth. At the same time, Ms. Muse Evans concludes that none of the candidates meet the technical requirement of 10 to 15 years experience in operational risk management, which is consistent with her previous feedback to Mr. Wade that the position description contains a length of experience that appeared to be longer than the experience of any of the candidates.

After the interviews, and looking for leadership skills in direction-setting, strategic vision, and team building, Ms. Cianci selects Ms. Gray first. Although the least qualified technically, Ms. Gray is the strongest organizational leader and has a track record demonstrating the ability to grasp new areas quickly. A strong subject matter expert with a proven record of leadership at all levels of the company, Mr. Kanefield is her second choice. Ms. Cianci does not recommend Ms. Oliver and Mr. Price for hire. From her experience, although he possesses a strong understanding of the subject matter and credit organization; Mr. Price is a difficult business partner who focuses on his accomplishments without acknowledging that teamwork produces results.

After the interviews, Mr. McGhee picks Ms. Gray first based on her demonstrated ability running HAMP which is an operational risk function. There is a gap between her and the other three candidates, with Mr. Price being second based on his understanding of the job function. Mr. McGhee ranks Mr. Kanefield and Ms. Oliver third and fourth. Mr. McGhee's differentiating considerations are demonstrated ability to create and lead teams, and ability to work with a diverse set of parties at the officer level.

Upon conclusion of the interview, Mr. Carter rates Ms. Gray as his first choice due to her exceptional relationship management skills, particularly with regulators. Excelling in business focus, Mr. Price is second. Mr. Kanefield and Ms. Oliver do not meet the position requisites.

Following the interviews, Mr. Bryar's first choice is Ms. Gray due to her strengths in delegating, ramping up quickly, getting her arms around a job, delegating, and bringing multiple stakeholders together. Mr. Kanefield is his second choice. Ms. Oliver is third due to uncertainty regarding her management and leadership skills. And, despite great potential, Mr. Price ranks fourth because he needs more experience.

After the conclusion of the interviews, Mr. Hayward selects Ms. Gray as the best candidate due to her leadership skills and ability to rapidly get up to speed in the required knowledge. Ms. Oliver is second.

<u>June 16, 2010</u> Mr. Price thanks Mr. Edwards for taking the time to interview him, expresses his hope to have the opportunity to work with Mr. Edwards in the future. Regardless of the outcome, he "found the process invaluable in my career development." Having enjoyed their discussion, Mr. Price states, "Thanks!" Mr. Edwards replies, "You are very welcome."

Mr. Price also sends a memo to the Compliance and Ethics department to make explicit that a relationship exists between his findings in the Dallas report, and internal controls required by the SEC. He believes that the Dallas report provides information that constitutes violations of SEC rules that require Fannie Mae as a publically traded company to maintain adequate internal controls, and understanding that relationship, Mr. Edwards retaliated against him in violation of Section 806 of SOX. Mr. Price reiterates his concern that in addition to violating the anti-retaliation provision of SOX, Mr. Edwards "discriminated against me because of my race in refusing to interview me for a position for which I am extremely well-qualified. This should be a focus of the current investigation." Mr. Price further expresses his commitment to Fannie Mae and desire to continue with a career in the organization.

June 28, 2010 Ms. Wolfe conducts an hour long conference call with the interviewers in part due to Mr. Price's complaint. She wants to make sure the selection process has been followed, hear their feedback, and determine whether a consensus exists. Prior to the interviewers' discussion, Ms. Wolf advises Mr. Edwards that he should just listen to the interviewers' feedback and not participate in the process or conversation. Mr. Edwards, Mr. Wade, Mr. McGhee, Mr. Hayward, and Ms. Cianci are in Ms. Wolf's office. Ms. Muse Evans is not able to join in the conference call. Mr. Edwards does not participate in the discussion.

At the start of the call, Ms. Wolfe's requests that the interviewers rank their candidates and provide their overall feedback.

Each interviewer presents his or her rankings as follows:

Mr. Wade	1st – Ms. Gray, 2d – Mr. Price.
Mr. McGhee	1st – Ms. Gray, 2d – Mr. Price.
Mr. Bryar	1st – Ms. Gray, 2d – Mr. Price.
Mr. Hayward	1st – Ms. Gray, 2d – Ms. Oliver.
Ms. Cianci	1st – Ms. Gray, 2d – Mr. Kanefield.
(Mr. Carter)[22]	1st – Ms. Gray, 2d – Mr. Price.
(Mr. Neill)[23]	1st – Ms. Gray, 2d – Mr. Price.
(Ms. Muse Evans)[24]	1st – Ms. Oliver, 2d – Ms. Price.

In general, the group has a concern about Mr. Kanefield's breadth of management because he hasn't managed large group. Ms. Gray has a breadth of management and experience bringing people together; and she is a strong manager which was a critical skill. Mr. Price is lacking in scope of management responsibility.

Summarizing their conversation, Mr. Neill states that he is not comfortable with either Ms. Gray or Mr. Price moving forward due to the requirements in the vice president position description. He observes that the group's comments seem to indicate that none of the candidates

[22]The evidentiary record is not clear whether Mr. Carter participated in the conference call.

[23]Mr. Neill did not declare his rankings at the meeting and instead raised the qualification issue.

[24]Ms. Muse Evans did not attend the conference call but provided her rankings to Ms. Werner.

have the necessary operational risk experience to be qualified for the position of vice president of operational risk. Mr. Neill suggests that the interview process be expanded outside of Fannie Mae.

The group then turns to consideration of Mr. Neill's observation, and discusses whether the leadership requirement or the technical requirement is preeminent. Eventually, the group decides that the technical requirement concerning 10 to 15 years of operation risk experience is more important. Although Ms. Gray received the majority of the votes, she does not have the technical requirements set out in the position description which might be a concern for Fannie Mae's regulator, FHFA. The interviewers reach a consensus that none of the candidates' experience satisfies the necessary technical requisite for the position of vice president of operational risk, and agree with Mr. Neill's suggestion that Fannie Mae seek external candidates.

After the conference call, on the basis that a decision had been made that none of the internal candidates were sufficiently qualified, and that Fannie Mae should look externally, Mr. Edwards supports the group's consensus.

Later, through an email, Ms. Muse Evans agrees that the candidates do not meet the qualifications, especially 10 to 15 years of operational risk experience.

<u>End of June – Beginning of July</u> Ms. Werner informs each internal candidate that he or she is no longer being considered for the job because he or she did not meet the qualifications. During her call with Mr. Price, Ms. Werner indicates that none of the internal candidates has been selected because no one had the required 10 to 15 years of operational risk-related management experience.

<u>July 2010</u> Fannie Mae retains a search firm to find external candidates for the vice president of operational risk position. The company develops a series of candidates.

<u>December 2010</u> After a few external candidates are interviewed and determined not to be a good fit, Mr. Edwards terminates the search. As a result, Ms. Muse Evans is given oversight responsibility for the operational risk program, and she hires a director of compliance.

Subsequently, FHFA determines that centralization of the operational risk function is the optimal way to lower operational risk and directs Fannie Mae to set up an organizational structure consistent with its determination, which did not include a vice president for operational risk in Dallas. Consequently, the vice president for operational risk in the Dallas division is never filled.

Case in Chief

According to 18 U.S.C. § 1514A(b)(2)(B), the applicable rules and procedures to be applied during the adjudication of a SOX whistleblower complaint are governed by 49 U.S.C. § 42121(b), which is part of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR 21").

Under 49 U.S.C. § 42121(b), as applied by 18 U.S.C. § 1514A and 29 C.F.R. § 1980.109, to establish that a respondent has committed a violation of the employee protection provisions of SOX, a complainant must prove by a preponderance of the evidence that an activity protected under SOX was a contributing factor to the unfavorable personnel action alleged in the complaint. Based on these principles, to establish a violation of SOX, a complainant must prove three elements: 1) he engaged in a protected activity; 2) he was subjected to an unfavorable personnel action; and 3) his protected activity was a contributing factor in the unfavorable personnel action. If a complainant establishes that his protected activity was a contributing factor in the adverse personnel action, the respondent can avoid liability by affirmatively proving by clear and convincing evidence that it would have taken the adverse action in the absence of protected activity.

In Mr. Price's case, non-selection to the position of vice president, seems to satisfy the second element of entitlement – adverse action.[25] Accordingly, I now turn to consideration of whether: 1) Mr. Price engaged in an activity protected under SOX, and 2) such activity was a contributing factor in the employment termination. In the event Mr. Price establishes these additional requisite elements of entitlement, I will also consider Fannie Mae's affirmative defense.

Issue # 1 – Protected Activity

Adjudication Principles

The first requisite element to establish unlawful retaliation against a whistleblower is the existence of a protected activity. Under 18 U.S.C. § 1514A(a)(1), the specific activity protected involves an employee providing information, or causing information to be provided, or otherwise assisting in an investigation, regarding any conduct the employee reasonably believes constitutes violations of section 1341, 1343, 1344, or 1348 of the Act, any rule or regulation of the Securities and Exchange Commission, or any provision of federal law relating to fraud against shareholders, when the information or assistance is provided to, or the investigation is conducted by, a federal regulatory or law enforcement agency, any member or committee of Congress, or a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct).

[25]Mr. Price also alleged Mr. Edwards' May 12, 2010 conversation with him and subsequent indirect communication to HR that Mr. Price did not want to continue with an interview also represented an adverse action. While I will subsequently discuss these actions when addressing the contributing factor element, since Mr. Price was eventually provided an opportunity to interview for the vice president position, the only alleged adverse action subject to possible redress is the non-selection for the vice president position.

The Secretary, U.S. Department of Labor, ("Secretary") has broadly defined protected activity as a report of an act that the complainant reasonably believes is a violation of the subject statute. Although the allegation need not be ultimately substantiated, the complaint must be "grounded in conditions constituting reasonably perceived violations." *Minard v. Nerco Delamar Co*., 92 SWD 1 (Sec'y Jan. 25, 1995), slip op. at 8. Under SOX, 18 U.S.C. § 1514A(a)(1), an employee engages in protected activity when he provides information regarding corporate conduct which the employee believes "constitutes a violation of" at least one of six specific categories of criminal fraud or security violations set out in the Act. The employee's belief must be subjectively and objectively reasonable. Although an employee is not required to identify the specific criminal provision, SEC rule or regulation, or applicable provision of federal law, his protected communication of a violation must nevertheless relate to one. The six categories specified by 18 U.S.C. § 1514A(a)(1) of which violation may be reported by an employee are:

1. Title 18, Crimes and Criminal Procedure, Chapter 63, Section 1341, Frauds[26] and Swindles [mail fraud]. This provision establishes that use of the Post Service or a private or commercial interstate carrier as a means to intentionally defraud or obtain property by false or fraudulent pretenses is a felony crime.

2. Title 18, Crimes and Criminal Procedure, Chapter 63, Section 1343, Fraud by Wire, Radio, or Television [wire fraud]. This provision establishes that use of wire, radio, or television communication as means to intentionally defraud or obtain property by false or fraudulent pretenses is a felony crime.

3. Title 18, Crimes and Criminal Procedure, Chapter 63, Section 1344, Bank Fraud [bank fraud]. This provision establishes that executing a scheme or artifice to defraud a financial institution is a felony crime.

4. Title 18, Crimes and Criminal Procedure, Chapter 63, Section 1348, Securities and Commodities Fraud [securities fraud].[27] This provision establishes that executing a scheme or artifice a) to defraud any person in connection with any commodity for future delivery, or any option on a commodity for future delivery, or any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act or that is required to file reports under Section 15(d) of the Securities Exchange Act; or b) to obtain by means of false or fraudulent pretenses any money or property in connection with the purchase of such security identified in a) above is a felony crime.

5. Any rule or regulation of the Securities Exchange Commission.

6. Any provision of federal law relating to fraud against shareholders.

[26]Fraud is defined as "false representation of a matter of fact . . .which is intended to deceive another so that he will act upon it to his legal injury." BLACK'S LAW DICTIONARY 788 (4th ed. 1968).

[27]This criminal provision was added by Section 807 of the Sarbanes-Oxley Act (2002).

For a complainant to establish that he engaged in SOX-protected activity that involves providing information to his employer, the complainant need only show that he "reasonably believes" the conduct complained of constitutes a violation of the laws listed at Section 1514. 18 U.S.C. § 1514A(a)(1). While the Act does not define "reasonable belief," the legislative history reveals that the reasonableness standard adopted by Congress was "intended to impose the normal reasonable person standard used and interpreted in a wide variety of legal contexts." (see generally *Passaic Valley Sewerage Commissioners v. Department of Labor*, 992 F. 2d 474, 478 (3d Cir. 1993). *Sylvester v. Parexel Int'l,* at 14, ARB No. 07-123, ALJ Nos. 2007-SOX-39, 2007-SOX-42 (ARB May 25, 2011), (citing S. Rep. 107-146 at 19 (May 6, 2002)).

The ARB has interpreted the concept of "reasonable belief" to require both that a complainant have a <u>subjective</u> belief that the complained-of conduct represents a violation of relevant law, and also that the belief be <u>objectively reasonable</u>. To establish the subjective belief component, a complainant must demonstrate that he actually believed the conduct complained of constituted a violation of relevant law. On the other hand, the objective component "is evaluated based on the knowledge available to a reasonable person in the same factual circumstances with the same training and experiences as the aggrieved employee," a standard similar to the objective reasonableness standard applied in Title VII retaliation claims. *Sylvester*, slip op. at 14-15, citing *Harp v. Charter Commc'ns*, 558 F.3d 722, 723 (7th Cir. 2009).

In *Sylvester*, the ARB provided further elaboration concerning the bounds of a SOX protected activity. First, to satisfy the reasonable belief requirement, a complainant need not actually convey the reasonableness of his beliefs to management. *Sylvester*, slip op. at 15. Second, SOX does not require a complaint to describe an actual violation of a relevant law to constitute protected activity. "An employee's whistleblower communication is protected where based on a reasonable, but mistaken, belief that the employer's conduct constitutes a violation of one of the six enumerated categories under Section 806." *Id.* slip op. at 16. Further, a whistleblower complaint describing a violation about to be committed, but that has not been committed yet, is protected. An "employee need not wait until a law has actually been broken to safely register his concern." *Id.*[28] Third, to prevail on a SOX whistleblower claim, a complainant is not required to allege shareholder fraud, nor must a complainant establish the elements of criminal fraud. *Id.* slip op. at 19-21. Fourth, there is no materiality requirement for the information being provided to the employer that a complainant alleges is a protected activity. *Sylvester*, slip op. at 22. However, the triviality of a complainant's concerns is relevant to whether the complainant actually engaged in protected activity under Section 806. Fifth, "a reasonable belief about a violation of 'any rule or regulation of the Securities and Exchange Commission' could even encompass a situation in which the violation, if committed, is completely devoid of any type of fraud." *Id.*, slip op. at 21. Sixth, reversing its prior holding in *Platone v. FLYi, Inc.*, ARB No. 04-154, ALJ No. 2003-SOX-27 (Sept. 29, 2006), the current ARB rejected the "definitive and specific" standard which required that a complainant's alleged protected activity definitively and specifically relate to one of the laws listed under § 1514A(a)(1). Instead, moving away from the heightened "definitive and specific" evidentiary standard, the present ARB held that the proper standard is whether a complainant has reported

[28]I note 18 U.S.C. § 1514A(a)(1) protects an employee who provides information of conduct which "constitutes a violation of" at least one of SOX specific provisions. Notably absent is any statutory language protecting the disclosure of pending or potential violations of the SOX provisions.

conduct that he reasonably believes *relates* to one of the violations listed in Section 806. *Id.*, slip op. 17-19.[29] That is, a SOX complainant must have a subjective belief that the challenged conduct violates a provision listed in Section 1514 A, and his belief must be reasonable.[30]

With these principles in mind, I turn to consideration of Mr. Price's two principal alleged protected activities raised at the hearing: a) presenting the Dallas report to Mr. Edwards and Ms. Fulcher on March 22, 2010,[31] and b) making a complaint on May 13, 2010 that Mr. Edwards was discriminating against him in the vice president selection process in retaliation for the Dallas report.[32] I will also address a third protected activity Mr. Price initially alleged in his complaint to OSHA: his June 16, 2010 presentation of SOX concerns that he believed were contained in the Dallas report.[33]

Since the protected nature of May 13, 2010 complaint is predicated on a determination that Mr. Price's presentation of the Dallas report was a SOX protected activity, my principal focus is on whether: a) Mr. Price subjectively believed on March 22, 2010 that his presentation of the Dallas report was an activity protected under SOX due to the contents of the report, and b) under an objective standard, Mr. Price's presentation of the Dallas report was a SOX-protected activity in light of its contents. Likewise, the protected nature of the June 16, 2010 correspondence to the Fannie Mae investigator to clarify Mr. Price's SOX concerns in the Dallas report rests on whether objectively the Dallas report was SOX-protected activity based on its contents.

Consequently, as a preliminary step, a review of the contents of the Dallas report is necessary.

Dallas Report

The March 2010 review of the NSO operational risk management team led to the conclusion of Mr. Wade, Mr. Carter, and Mr. Price that the current NSO operational risk management organizational structure and execution model were not sufficient to successfully execute the company's operational risk management program. Specifically, the structure and composition of the present NSO organization, which included the internal compliance team that liaised with internal/external auditors and SOX, was focused on a typical compliance function model, with little evidence of an operational risk function. In support of this conclusion, the report presented several key observations.

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[29] I also note that in *Robinson v. Morgan–Stanley,* ARB Case No. 07–070, ALJ No. 2005 SOX 44, slip op. at 13-14 (Jan. 10, 2010), the ARB observed that SOX "does not indicate that an employee's report or complaint about a protected violation must involve actions outside the complainant's assigned duties."

[30] *See Nielsen v. AECOM Tech Corp.*, No. 13-235 (2d. Cir. August 8, 2014).

[31] A potential violation of 18 U.S.C. § 1514A(a)(1).

[32] A potential violation of 18 U.S.C. § 1514A(a)(2).

[33] Also, a potential violation of 18 U.S.C. § 1514A(a)(1).

First, an operational risk function did not exist within NSO because: a) operational risk pillars were not implemented and the team had limited knowledge of the pillars and their functions; b) the team did not have knowledge of the 2008 FHFA guidance on operational risk; and c) the team was not aware of core operational frameworks such as Basel and COSO.

Second, unclear distinction of roles and responsibilities existed across all three teams. In particular, while the organizational chart showed Mr. Hurt's title as Director of Compliance, the HR designation was Director of Operational Risk. Further, in addition to current job descriptions which were inconsistent with HR descriptions for operational risk leads and analysts, and duplicative tasks across the teams, projects and tasks were assigned based on individuals' skill sets rather than based on the team's purpose.

Third, team objectives were based on projects "with little evidence of an overarching strategy that tied the team or their activities together to create synergy across operations." The organization did not have a documented common vision or goal.

Fourth, the organization had inconsistent alignment with corporation function and programs. For example, the organization "seems" aligned with compliance and ethics, and the business resiliency teams. The organization had also developed their own EUC's to: a) track operational incidents versus using ACORD, and b) to manage LARC transactions.

Fifth, questionable leadership practices existed, particularly in the area of information sharing. The information distribution structure was hierarchical with information apparently stopping at Mr. Hurt's level. As a result, the organization was not provided copies of monthly operational risk reports, which included operational incident tracking and a summary of complete RCSAs. Besides being unaware of the recently conducted NSO RCSA, the organization members had many questions, most of which had been covered in the previous weekly operational risk staff meeting which only Mr. Hurt had attended.

In addition to this executive summary, an analysis of the organizational structure determined that only one team was performing operational risk in accordance with the company's operational risk management program. The remaining teams were either performing compliance or quality assurance functions, which included "documenting policies and procedures, control testing in preparation for audit, and coordinating request for information from the corporate Compliance, SOX, Fraud, and Audit teams." Additionally, another team was not being supported by an operational risk function.

A review of the organizational chart also revealed that operational risk job title and team structure were inconsistent across the organization, which in turn lead to inconsistent application of operational risk methodologies and tools. And, when operational risk was applied, the entire value stream was not considered which produced a limited view of the risk exposure for the organization. These organizational disconnects started with the hiring process when the position being filled was titled operational risk analyst, while the job requirements related to compliance or quality assurance functions. As a result,

> Our regulator's expectation for what operational risk management staff is focusing on is not being met . . . Operational risk management is applied inconsistently . . . impeding the ability to implement an overarching strategy for managing operational risk . . . Staff may not have the appropriate skill set to complete operational risk responsibilities . . . Staff confusion [exists] as to whether their position is a risk management or compliance position.

The team recommended a structure that separated operational risk and compliance function across the Dallas organization to avoid confusion concerning roles and responsibilities. The current staff of 15 employees would be increased to 18. In addition to several other realignment changes, the new structure created a new position, vice president of Operational Risk, and a job description was attached. This position would ensure a comprehensive operational risk function and overarching strategy for the Dallas organization.

Finally, Mr. Carter presented a 90-day plan, which set out a timeline for actions "to align the Dallas Operational Risk Team with the Company's Operational Risk Management Program," which included realignment, operational risk training, and end-to-end monitoring and management, with emphasis on executing RCSAs in accordance with the playbook and executing to OIT program in accordance with OIT standards.

Subjective Belief

Certainly, one of the most probative means to assess whether a complaint subjectively believed he was engaging in a protected activity is his recollection of his state of mind at the time. According to Mr. Price, at the time he helped draft and present the Dallas report, he believed it disclosed a failure to maintain adequate internal controls in the Dallas organization that related to the integrity of Fannie Mae's SOX-mandated financial reports, and represented a failure to comply with, thus a violation of, SEC regulations, specifically Section 13(b)(2)(B) which requires an issuer of stock to devise and maintain a system of internal controls sufficient to provide assurance that transactions are properly authorized and recorded, with accountability for assets. Additionally, he asserted that if the organization's structure is inadequate to manage operational risk, then it naturally follows that a SOX issue will likely occur. And, the 90-day plan demonstrated the Dallas organization did not possess the requisite operational risk support necessary to produce work product that could be relied upon by Fannie Mae in the execution of its responsibilities under SOX.

However, as previously discussed, I have some credibility concerns about Mr. Price's recollection of his subjective state. Further, and significantly, according to Ms. Fischman's notes from their July 7, 2010 interview, Mr. Price indicated that while he believed Mr. Edwards' NSO organization could have SOX deficiencies Mr. Price stated that he was not aware of any at the time of the study. Consequently, I need to consider other evidence potentially indicative of his subjective belief on March 22, 2010 – Mr. Price's contemporaneous actions, and in particular inactions, which accompanied, and occurred shortly after, the Dallas report – to determine whether Mr. Price actually believed that he reported SOX violations, potential SOX violations, and violations of SEC rules and regulations <u>when he presented</u> the Dallas report.

As Mr. Price acknowledged during the Fannie Mae investigation, there's no dispute that neither the Dallas report, nor Mr. Price's March 22, 2010 presentation of the report, specifically stated that the noted deficiencies were SOX violations, potential SOX violations, or fraud against the shareholders. Similarly, while the report discussed weaknesses within the NSO organizational structure and he thought the structure was actually inadequate to enable SOX compliance, Mr. Price also acknowledged that he did not specifically communicate that concern to Mr. Edwards and Ms. Fulcher. And, in response to my questioning, Mr. Price replied the Dallas report did not specifically highlight that any of the observed problems had SOX implications or impacts. Considering both Mr. Price's assertion about the importance of SOX compliance within Fannie Mae and his subsequent certainty that the report clearly highlighted SOX issues especially in terms of an inadequate operational risk structure for SOX compliance, the absence of any specificity about SOX concerns in Dallas report, and his failure to present specific SOX findings during the March 22, 2010 presentation seems inconsistent with his purported subjective belief about the significant SOX issues contained in the report.

Further, according to Mr. Edwards, if Mr. Wade, Mr. Carter, or Mr. Price believed there were potential SOX issues in the Dallas report, he would have expected them to identify such concerns in the report and on March 22, 2010. Similarly, in the absence of any specific SOX concern, Ms. Fulcher did not perceive or understand that the Dallas report contained any SOX or SEC rules violations. Additionally, Mr. Bryant, an operational risk director for Fannie Mae in 2010, observed that if there had been any SOX implications in the Dallas report, he likewise would have expected them to be specifically spelled out. And, Ms. Oliver, a Fannie Mae director of operational risk, also observed that if she suspects there is a SOX issue while performing an evaluation, she will reach out to a member of the SOX team to define the extent to which a deficiency is a significant or material weakness. There was never an instance when she located a SOX potential issue and didn't reach out to, or alert, the SOX team.

In light of these observations, since the Fannie Mae community was clearly sensitized to SOX issues, it would not be unreasonable to expect that if Mr. Price actually believed the Dallas study revealed SOX violations, potential SOX violations, and violations of SEC rules and regulations, that he would have actually characterized the noted deficiencies on March 22, 2010 as SOX concerns. In particular, given the report's finding that the NSO organization was using an EUC to track operational incidents, Mr. Price's silence about the purported SOX significance of that shortfall precluded any immediate remediation by the Fannie Mae SOX team.

Mr. Price's silence about the SOX implications in the Dallas report was also profound in April 2010 when he and Mr. Wade met with Mr. Hayward who was coming in to replace Mr. Hurt as the head of NSO. According to Mr. Hayward, during the course of their presentation about the organizational problems he was inheriting, no one said anything about SOX or potential SOX violations. He had no impression that anything they presented was related to SOX or SEC rules.

Similarly, when he presented his May 13, 2010 discrimination complaint, and attached the Dallas report, Mr. Price remained mute about any SOX implications associated with the Dallas report. Rather than alleging that Mr. Edwards was retaliating against him because he informed Mr. Edwards about SOX problems in his organization, Mr. Price asserted that Mr.

Edwards was concerned about Mr. Price getting the vice president job because Mr. Price would be transparent about operational risk issues in his organization, and Mr. Edwards wanted a non-operational risk professional in that position.

Mr. Price's May 17 and 18, 2010 memorandums to himself about Mr. Edwards' actions and Mr. Price's reactions also contain no reference to SOX. In particular, when discussing Mr. Edwards' retaliation for conducting a study that highlighted that his organization was not in alignment with the regulator's approved framework, he didn't mention SEC regulations or any violations of those regulations or SOX provisions.

His SOX silence persisted during the May 2010 initial interviews with Mr. Fischman, when he was given the opportunity to fully discuss his discrimination complaint. Significantly at that point, Mr. Price never asserted that he was being retaliated against for any SOX violations. He never gave any indication that he thought the Dallas study implicated SOX concerns.

Finally, neither during, nor after the Dallas report through mid-June 2010, despite multiple opportunities, Mr. Price never informed the Fannie Mae SOX team of any SOX issues in the Dallas NSO organization. He did not place any of the identified deficiencies into ACORD and he did not explicitly report any SOX violation, potential SOX violation, or SEC rule/regulatory violation to anyone at Fannie Mae, including the SOX team. As Mr. Price acknowledged, due to his inaction, the SOX team did not have an opportunity to review his concerns and take remediation action if warranted. Likewise, during the preparation of the Dallas report, Mr. Price apparently did not make any effort to ensure that the associated 90-day plan included elimination, or even remediation, of any specific SOX deficiencies. Instead, Mr. Price waited almost three months before coming forward with an explicit assertion consistent with his stated subjective belief that Mr. Edwards' actions represented retaliation due to his raising SOX concerns in the Dallas report.

Each of these considerations standing alone may be insufficient contrary evidence to Mr. Price's testimony about his subjective belief, in which I have diminished confidence as to its credibility. However, upon consideration of Mr. Price's cumulative contemporaneous actions, inactions, and consistent silence about any specific SOX concerns from March 22, 2010 through mid-June 2010, I find the cumulative evidence to be a more probative reflection of his subjective belief on March 22, 2010 than his mid-June 2010, and subsequent, allegations, explanations, and testimony. As a result, the probative circumstantial evidence outweighs Mr. Price's stated representation of his subjective belief at the time he presented the Dallas report. Accordingly, I find Mr. Price has failed to establish that on March 22, 2010 he subjectively believed that he was reporting SOX violations, imminent SOX violations, or violations of SEC rules and regulations, which precludes a finding that he engaged in an activity protected under SOX on that day.

Objective Standard

As previously noted, a complainant must also establish that the reported conduct is objectively reasonable in terms of being a violation of SOX, which is assessed based on the knowledge available to a reasonable person in the same factual circumstances with the same training and experiences as the aggrieved employee. In other words, would a similarly situated reasonable person upon reading the Dallas report and hearing the March 22, 2010 presentation conclude Mr. Price was reporting SOX violations, potential SOX violations, or violations of SEC rules and regulations. In evaluating whether Dallas report was objectively reasonable in this regard, I need to address several aspects of the Dallas report that Mr. Price asserts are objectively SOX violations, potential SOX violations, and violations of SEC rules and regulations.

<u>Operational Risk Management Deficiencies</u>

Mr. Price's principal assertion, as supported by Mr. Thorpe,[34] is that the multiple operational risk management inefficiencies and deficiencies identified in the Dallas report were implicitly and inherently linked to SOX such that the noted shortfalls objectively represented potential SOX violations. There was a direct overlap between the SOX risk control matrix and operational risk controls, such that if the organizational structure was inadequate to manage operational risk, then SOX risks could not be adequately managed; and it naturally followed that SOX issues likely would occur. Further, "direct" and "indirect" correlations existed between reporting SOX deficiencies and reporting operational incidents; notably, operational incidents were monitored by SOX personnel for SOX violations. Additionally, SOX process and operational risk process maps overlapped. And, Fannie Mae's operational risk management function was linked organizationally with its SOX compliance function at the corporate level.

Specifically, the Dallas report indicated the operational risk management staff was not meeting the regulatory-mandated focus, causing operational risk to be applied inconsistently, and impeding the ability to implement an overarching strategy for managing operational risk. The staff also did not have the appropriate skill set and was confused as to whether their positions involved risk management or compliance, which represented a misalignment of job descriptions. The executive who acted as director of operational risk management didn't perform operational risk management. Finally, the operational risk management staff was not organized in an efficient framework, didn't understand core operational risk concepts, did not did not implement the five pillars of operational risk, and were not prepared to conduct RCSAs.

However, from an objective perspective, finding SOX violations on the basis of implicit and inherent connections between operational risk and SOX fails for two reasons. First, and most significantly, operational risk does not always equate to SOX risk. To the contrary, Mr. Price and Mr. Thorpe essentially indicated that SOX is only one subset of operational risk; and according to Mr. Bryant only about 10% of operational risk controls are also SOX controls. Consequently, while the ARB no longer requires that a reported violation be definitively and specifically related to a SOX provision in Section 18 U.S.C. § 1514A, some specificity is nevertheless warranted within the context of the Dallas report as to which operational risk issue

[34]Upon review of the Dallas report, Mr. Thorpe opined that the operational risk deficiencies had the potential to create financial reporting deficiencies that may be deemed to be SOX violations.

is directly linked to the potential for SOX deficiency, rather than generalized assertions of a connection which require additional interpretative explanation beyond the four corners of the report.

Second, to the extent such generalized connections may be deemed to be sufficient, most of the actual operational risk issues identified in the Dallas report objectively do not rise to the level the ARB's classification of an "about to be committed" violation of SOX. Notably, Mr. Price subsequently alleged that poor operational risk management, lack of use of operational risk pillars, inconsistencies in operational risk functions, lack of appropriate skill levels, staff confusion, and misalignments of the operational risk management function within NSO "might" pose a SOX problems. However, such speculative causation is insufficient to demonstrate that the operational risk deficiencies in the Dallas report objectively represented imminent violations of SOX.

Inconsistency with FHFA Standard

Mr. Price also asserted that numerous operational risk issues with NSO demonstrate that the organization's internal controls failed to comply with FHFA standards. Again, however, the Dallas report did not either state or objectively demonstrate that non-compliance with FHFA internal control standards equates to a violation of SOX.

Absence of Operational Risk Management Support

The Dallas report included a finding that the claims and disbursement team was not being supported by an operational risk function. After mid-June 2010, Mr. Price indicated that he emphasized this finding in his May 13, 2010 complaint as an example of a potential SOX violation because the claims and disbursement team had 70% of the SOX controls and 98% of the SOX-related claims were arising in this area. Yet, Mr. Price did not provide or present that additional information on March 22, 2010.[35] As a result, as set out in the Dallas report, the absence of an operational risk function for the claims and disbursement team did not objectively represent a pending SOX violation.

Violation of SEC Rules and Regulations

Fannie Mae is an SEC registrant subject to Section 13 of the Security and Exchange Act, which requires public companies to maintain adequate internal controls. In light of that regulatory requirement, Mr. Price maintained that the Dallas study reported a violation of Section 13(b)(2)(B) because the identified multiple deficiencies in the NSO operational risk management function implicitly disclosed a failure of the business unit's internal controls which would preclude Mr. Edwards from being able to rely on its work product, and thus cause a violation of Section 13(b)(2)(B) due to inadequate internal controls. Mr. Thorpe further explained that the failure of an internal control could lead to a SOX deficiency because a process that is being relied upon to produce data or transactions that become financially reportable is not operating correctly. That in turn will lead to false or inaccurate financial statements, "and thereby at least a SOX deficiency."

[35]He also did not include those additional statistics in his May 13, 2010 complaint.

For several reasons, I find the Dallas report does not objectively contain a violation of an SEC regulations. First, the Dallas report does not contain a specific finding that the NSO, or more significantly, that Fannie Mae's internal controls have failed. Second, under an objective standard, more than an "implicit" connection which equates operational risk management deficiencies which interfere with the successful execution of an operational risk management problem with a failure of SEC-mandated internal controls is necessary. And, third, the potential for a SOX deficiency based on the Dallas study's findings concerning operational risk shortfalls is too speculative to conclude that the Dallas report objectively presented a SOX deficiency in terms of failed internal controls.

Use of EUC

The Dallas report noted that an EUC was being used to track operational incidents rather than Fannie Mae's ACORD database.[36] Mr. Price and Mr. Thorpe explained that use of ACORD was important because the SOX team looked at the ACORD database to determine whether operational incidents had SOX implications. Consequently, the operational risk team's use of a separate database deprived the Fannie Mae SOX team of a critical tool for identifying and addressing potential SOX deficiencies.

The actual finding in the Dallas report only indicated that an EUC was being used instead of ACORD, which essentially faults the business unit for not tracking operational incidents in the centralized database. Notably absent was any additional determination concerning the consequences of that failure, and more specifically the report did not mention the impairment of the Fannie Mae SOX team's ability to assess operational incidents for SOX implications. This lack of specificity is significant in terms of an objective assessment whether a SOX deficiency was identified because most operational incidents did not have SOX implications. Also missing was any example of a SOX-related operational incident that had actually gone unreported to the Fannie Mae SOX team due to the use of the EUC. Consequently, from an objective perspective, the one line reference to the alternative use of an EUC did not identify an imminent SOX violation.

In summary, for various reasons, I conclude that operational risk management shortfalls, inconsistency with FHFA standards, and the absence of an operational risk support function for one NSO team did not objectively equate to SOX violations or pending SOX violations. Additionally, the Dallas report did not objectively establish a violation of SEC rules or regulations and the alternative use of an EUC did not objectively establish a SOX violation or imminent SOX violation. Accordingly, I find Mr. Price has failed to establish that his March 22, 2010 presentation of the Dallas report objectively contained information about SOX violations, imminent SOX violations, or violations of SEC rules and regulations, which also precludes a finding that he engaged in an activity protected under SOX on that day.

[36] Based on the evidence developed during the adjudication of this case, this finding is incomplete. The NSO operational risk team used an EUC to track operational incidents during their validation process. Then, if an operational incident was validated, the team placed the operational incident into ACORD. As a result, the use of the EUC did not deprive the Fannie Mae SOX team of ability to review NSO's operational incidents in ACORD.

Conclusion

Due to diminished confidence in Mr. Price's representation about his state of mind during the March 22, 2010 presentation of the Dallas report, and based on the more probative evidence of his contemporaneous actions and inactions, I find Mr. Price has failed to establish that on March 22, 2010, he subjectively believed that he was reporting SOX violations, potential SOX violations, or violations of SEC rules and regulations. I further conclude that Mr. Price has failed to establish that from a reasonable person perspective, the Dallas report objectively contained SOX violations, imminent SOX violations, or violations of SEC rules and regulations. Accordingly, Mr. Price's presentation of the Dallas report was not a protected activity under SOX.

Correspondingly, since the March 22, 2010 presentation of the Dallas report was not a protected activity, Mr. Price's May 13, 2010 complaint of employment discrimination for presenting the Dallas report was also not a SOX-protected activity. Likewise, since the Dallas report did not objectively contain information about SOX violations, imminent SOX violations, or violations of SEC rules and regulations, Mr. Price June 16, 2010 correspondences alleging the Dallas report contained SOX deficiencies also fails under the objective standard as a SOX protected activity.

Since the March 22, 2010 presentation of the Dallas report, Mr. Price's May 13, 2010 discrimination complaint, and his June 16, 2010 clarification correspondence were protected activities, his SOX complaint must be dismissed.

Issue # 2 – Contributing Factor

Although Mr. Price has failed to establish the first requisite element for whistleblower protection under SOX – protected activity – for the sake of completeness, I will proceed to address the second issue in this case – contributing factor – as if Mr. Price's March 22, 2010 presentation of the Dallas report, his May 13, 2010 discrimination complaint, and June 16, 2010 email to Ms. Fischman were activities protected under SOX.

Adjudication Principles

The ARB recently confirmed that "contributing factor" is "any factor which, alone or in connection with other factors, tends to affect in any way" the decision concerning the adverse personnel action, *Bechtel v. Competitive Technologies, Inc.*, ARB No. 09-952, ALJ No. 2005-SOX-33, slip op. at 12 (ARB Sept. 30, 2011) (citing *Marano v. U. S. Dep't of Justice*, 2 F.3d 1137, 1140 (Fed. Cir. 1993)), *aff'd sub. nom. Bechtel v. U.S. Dep't of Labor, Admin. Rev. Bd.*, 2d Cir., No. 11-4918 (2d Cir. Mar. 15, 2013). In the absence of direct evidence of causation, contributing factor may be proven through circumstantial evidence which may include temporal proximity, indications of pretext, inconsistent application of employer's policies, and shifting explanations for an employer's actions. *Bechtel*, ARB No. 09-952, at 13. If a complainant shows evidence of pretext, he may rely on inferences drawn from such pretext to establish by a preponderance of the evidence that protected activity was a contributing factor in the unfavorable personnel action. *Bechtel*, ARB No. 09-952, at 13. At the same time, although the ARB has stated that "proof of causation or 'contributing factor' is not a demanding standard," *Rudolph v. National Railroad Passenger Corp.*, ARB No. 11-037, ALJ No. 2009 FRS 015, slip op. at 15, (Mar. 29, 2013), under the AIR 21 adjudication framework incorporated by SOX, and specifically 29 C.F.R. § 1980.109(a),[37] the complainant's burden of proof for all three elements, including contributing factor, remains "preponderance of the evidence."

The determination of contributing factor essentially has two components: knowledge and causation.[38] In other words, the employer must have been aware of the protected activity (knowledge) and that protected activity was a contributing factor in the decision to take the adverse personnel action (causation). Further, knowledge of a protected activity may be either actual or imputed. Regarding the latter category, relying on the "cat's paw" legal concept of liability recognized in *Staub v. Proctor Hosp.*, 131 S. Ct. 1186 (2011), the ARB has concluded a complainant need not prove the decision maker responsible for the adverse action actually knew of the protected activity if he can establish that any person advising the decision maker on the adverse action was aware of the protected activity. *Rudolph*, slip op at 17.

With these principles in mind, I will determine whether any of Mr. Price's alleged protected activities was a contributing factor for his non-selection for the vice president position by addressing actual/imputed knowledge and causation.

Knowledge

Again the adverse action in this case is Mr. Price's non-selection for the new NSO vice president for operational risk position. Of the multiple people involved in that process, Mr. Edwards, Mr. Wade, and Mr. Carter were well aware of the Dallas report. Ms. Muse Evans and Mr. McGhee were aware of the Dallas report, but did not know all the specifics. The remaining individuals, Mr. Neill, Ms. Cianci, Mr. Bryar, and Mr. Hayward were not aware of the first alleged protected activity.

In regards to Mr. Price's May 13, 2010 complaint, Mr. Edwards and Mr. Wade again were aware that Mr. Price had complained about the selection process. However, Mr. Carter, Ms. Muse-Evans, Mr. McGhee, Mr. Neill, Ms. Cianci, Mr. Bryar, and Mr. Hayward did not have direct knowledge of the second alleged protected activity.

And, the evidentiary record contains a dearth of probative evidence that any of the participants in the vice president selection process became aware of Mr. Price's third protected activity on June 16, 2010, which consisted of a clarification email to the Fannie Mae investigator, Ms. Fischman. By June 15, 2010, all the interviews had been completed. No documentation, statement, or testimony has been offered into evidence that indicates, Mr. Edwards, Mr. Wade, Mr. Carter, Mr. McGhee, Ms. Muse Evans, Mr. Neill, Mr. Cianci, Mr. Bryar, or Mr. Hayward became aware of Mr. Price's additional allegations in the 12 days before

[37]76 Fed. Reg. 68,084, 68,095 (Nov. 3, 2011).

[38]*See Bechtel*, slip op. at 13 (the four elements that a claimant must prove by a preponderance of the evidence are: a) statutorily protected activity, b) employer's knowledge of the protected activity, c) adverse action, and d) contributing factor).

their June 28, 2010 group discussion and non-selection of any application. Additionally, Ms. Fischman's investigative report was not released until December 2010. Finally, since Ms. Fischman did not provide any advice to any of the interviewers about the selection for vice president, her knowledge of Mr. Price's third protected activity is not imputed to them.

Concerning imputed knowledge of Mr. Price's May 13, 2010 complaint, during the May FHFA meeting in Dallas, Ms. Muse Evan became aware of Mr. Edwards' preference for Ms. Gray. However, Ms. Muse Evans credibly testified that Mr. Edwards advised her to conduct an objective selection process, and she did so. As a result, Mr. Edwards' knowledge of Mr. Price's second protected activity is not imputed to her.

I have considered Mr. Neill's statement that Mr. Edwards told him he preferred Ms. Gray. However, while he assumed the conversation occurred prior to the interviews, Mr. Neill could not actually recall when their conversation occurred; whereas, Mr. Edwards recalled that it did not occur before the interviewers' discussion. Further, as Mr. Neill observed, Mr. Edwards' opinion had no effect because Mr. Neill eventually concluded that none of the candidates, including Ms. Gray, were qualified. As a result, I find an insufficient probative basis upon which to impute Mr. Edwards' knowledge of Mr. Price's first two protected activities to Mr. Neill.

The evidentiary record demonstrates that prior to the interviews Mr. McGhee was aware that Ms. Gray was the preferred candidate. However, the evidentiary record does not establish that Mr. Edwards was the source of that knowledge. Instead, shortly after the vice president position was announced in April 2010, a month <u>before</u> the second protected activity, Mr. McGhee apparently had already developed his own preference for Ms. Gray and encouraged her to apply for the vice president position as a next career move. As a result, I find an insufficient basis to impute Mr. Edwards' knowledge of Mr. Price's May 13, 2010 second protected activity to Mr. McGhee.

Mr. Carter was made aware of Mr. Edwards' preference for Ms. Gray because Mr. Price copied him in the emails that he sent to Mr. Wade about the issue. Since Mr. Edwards himself did not inform Mr. Carter of his choice, I will not impute Mr. Edwards' knowledge of Mr. Price's second protected activity to Mr. Carter.

Since Mr. Edwards did not contact Ms. Cianci, Mr. Bryar, and Mr. Hayward about his preference and did not engage in the interviewers' discussion of the applicants, his knowledge of Mr. Price's first two protected activities also is not imputed to Ms. Cianci, Mr. Bryar, and Mr. Hayward.

In summary, of the executives and directors who participated in some manner in the vice president selection process, none had knowledge of Mr. Price's third protected activity. Mr. Edwards and Mr. Wade were aware of the first two protected activities. Mr. Carter, Mr. McGhee, and Ms. Muse Evans were completely, or partially, aware of the first protected activity associated with the Dallas report. And, significantly, Mr. Neill, Ms. Cianci, Mr. Bryar, and Mr. Hayward were <u>not</u> aware of <u>any</u> of Mr. Price's protected activities.

Causation

In rendering a causation determination, in light of the interview process and subsequent group discussion, I will first address the actions of one group of individuals (Mr. Neill, Ms. Cianci, Mr. Bryar, and Mr. Hayward) who were unaware of Mr. Price's protected activities and then consider the remaining executives and directors separately on the issue of causation in terms of testimony and circumstantial evidence related to temporal proximity, animosity, and pretext.

Mr. Neill, Ms. Cianci, Mr. Bryar, and Mr. Hayward

In review, following their interviews of the prospective candidates, these four executives made the following selections for vice president: Mr. Neill – Ms. Gray, then Mr. Price; Ms. Cianci – Ms. Gray, then Mr. Kanefield; Mr. Bryar – Ms. Gray, then Mr. Price; and Mr. Hayward – Ms. Gray, then Ms. Oliver. None of these individuals selected Mr. Price for the vice president position. And since they were each unaware of Mr. Price's protected activities, his protected activities were not contributing factors in their decisions not to select him for vice president.[39]

Mr. Carter

Mr. Carter selected Ms. Gray first and Mr. Price second. As a co-author of the Dallas report, Mr. Carter was intimately aware of Mr. Price's first protected activity. However, little basis exists for concluding that his selection of Ms. Gray for vice president was partially caused by Mr. Price's March 22, 2010 presentation and the contents of the report that Mr. Carter himself helped prepare. And, because Mr. Carter was unware of the other two protected activities, I find that Mr. Price's protected activities were not contributing factors in his decision not to select Mr. Price for vice president.

Ms. Muse Evans

Ms. Muse Evans selected Ms. Oliver for the vice president position, with Mr. Price second. While she was aware of Mr. Price's first protected activity, and she made her choice for vice president a few months later, I find no evidence that at the time of her selection she harbored any animosity towards Mr. Price for his preparation and presentation of the Dallas report. Eventually, since the vice president position was never filled, Ms. Muse Evans was given the oversight responsibility for the NSO operational risk program based in part on the report. However, any feelings she may have had about that additional assignment would have developed after completion of the vice president selection process and would not have been a factor in her choice for vice president.

[39] I also note that while Mr. Neill, Ms. Cianci, Mr. Bryar, and Mr. Hayward worked in Mr. Edwards' organization, the record contains no probative evidence that their relative employment positions affected their selections for vice president.

The evidentiary record also contains no evidence that her selection analysis was pretextual. To the contrary, Ms. Muse Evans credibly testified that she focused on the applicants' ability to build something new, provide the necessary leadership, and deliver bad news. While she concluded that none of the candidates met the technical requirements for the position, she selected Mr. Oliver as the strongest candidate based on her interview and demonstrated ability to resolve operational risk problems.

Accordingly, I find that Mr. Price's first protected activity, as well as the other two protected activities, was not a contributing factor in Ms. Muse Evans' decision not to select Mr. Price for vice president.

<u>Mr. McGhee</u>

Upon completion of the interviews, Mr. McGhee chose Ms. Gray for vice president, with Mr. Price as his second choice. At that time, he had knowledge of the Dallas report.

In considering whether Mr. Price's first protected activity had any impact, the Dallas report only observed that Mr. McGhee's claims and disbursement group was not being supported by an operational risk function. The report did not place the responsibility for that deficit with Mr. McGhee. And, the evidentiary record contains little probative evidence that Mr. McGhee had any adverse reaction to the Dallas report or harbored any associated animosity.[40]

In terms of pretext, Mr. McGhee presented a reasonable explanation for his selection. While acknowledging an uncertainty about Ms. Gray's technical experience, and recognizing that as an operational risk expert Mr. Price understood the functions of the new job, Mr. McGhee selected Ms. Gray based on her success in running an operational risk function and her leadership ability, as well as her HAMP experience. For Mr. McGhee, the principle differentiating factors were demonstrated ability to create and lead teams, and ability to work with a diverse set of parties at the officer level. He gave Ms. Gray an overall rating of "exceeds," with five "exceeds" in specific categories out of eight. He rated Mr. Price with an overall rating of "meets criteria," with two "exceeds."

Consequently, I find the preponderance of the probative evidence fails to establish that Mr. Price's March 22, 2010 protected activity, or either of the other two protected activities, was a contributing factor in Mr. McGhee's selection of Ms. Gray for vice president.

[40]Mr. Price also alleged to Mr. Wade in mid to late May 2010 that Mr. McGhee was intimidated by blacks who were in leadership positons. Notably, Mr. Wade disagreed with Mr. Price's assertion that race played any role. Since the only evidence of alleged racial discrimination by Mr. McGhee is this exchange between Mr. Price and Mr. Wade, and in light of their apparent disagreement on the issue, the record contains insufficient probative evidence that race was a factor in Mr. McGhee's selection.

Mr. Wade

Mr. Wade selected Ms. Gray for the vice president position. He placed Mr. Price second. Again, in a manner similar to Mr. Carter, as the leader of the team that conducted and prepared the Dallas report, and who had a major role in editing the report, Mr. Wade had no reason to discriminate against Mr. Price during the selection process due to Mr. Price's March 22, 2010 protected activity of presenting the Dallas report to Mr. Edwards. Additionally, as previously discussed, Mr. Wade was unaware of the third protected activity.

Mr. Wade was also very familiar with Mr. Price's May 13, 2010 discrimination complaint, but the associated causation analysis regarding this second protected activity is more involved and requires a review of the sequence of events between March 22, 2010 and Mr. Wade's selection decision in June 2010.

Following the March 22, 2010 presentation, Mr. Wade suggested Mr. Edwards consider Mr. Price as a candidate for the vice president position because he was best equipped to get the vice president position up and running. About a month later, on April 22, 2010, Mr. Wade encouraged Mr. Price to apply for the vice president position, which Mr. Wade believed would be good practice for Mr. Price. On April 30, 2010, after some reservation, Mr. Wade concurs with Mr. Edwards' suggestion to put HAMP within the scope of the new vice president position because the combination of HAMP and operational risk would make everyone's life easier. On May 12, 2010, after Mr. Price informed Mr. Wade about his conversation with Mr. Edwards, Mr. Wade advised Mr. Price not to do anything. On May 13, 2010, in response to being informed that Mr. Edwards had indicated Mr. Price didn't want an interview, Mr. Price filed his discrimination complaint. On May 17 and 18, 2010, during their conversations, Mr. Wade accused Mr. Price of being selfish and predicted Mr. Price would regret his decision to file the complaint as a costly mistake. He also told Mr. Price to look at the vice president job description and recognize that he was not technically qualified. In mid-June 2010, upon completion of the candidates' interviews, Mr. Wade selected Ms. Gray as his first choice based on her competency and leadership. In Mr. Wade's opinion, while Mr. Price had far more technical knowledge, he lacked the ability to bring teams together; whereas Ms. Gray was the most polished of the candidates, with knowledge of the business, lots of experience building teams and developing groups of people, and the ability to quickly learn the position.

This sequence of events raises several factors to consider. First, Mr. Wade's ardor for Mr. Price's candidacy appears to have waned between the post-presentation discussion with Mr. Edwards on March 22, 2010, and his conversations with Mr. Price on May 17, and 18, 2010. Second, Mr. Wade also appears to have had some frustrated feelings about Mr. Price's decision not to follow his advice given as a sponsor for Mr. Price not to do anything in response to Mr. Edwards' actions. Third, in addition to Mr. Price's May 13, 2010 discrimination complaint, another event occurred that also provides an explanation for the change in Mr. Wade's thoughts about Mr. Price's qualifications for vice president. Specifically, several weeks before Mr. Price's May 13, 2010 discrimination complaint, Mr. Wade agreed with the recommendation that HAMP be added to the vice president's position, which clearly added merit to Ms. Gray's selection, and diminished Mr. Price's ability to meet the technical requirements of the new vice president position. And, fourth, Mr. Wade provided a non-pretextual explanation for his selection of Ms. Gray over Mr. Price.

In weighing this conflicting evidence, recognizing that multiple reasons, including Mr. Price's second protected activity, may explain Mr. Wade's ultimate selection of Ms. Gray; and, considering Mr. Wade's belief that the interview process would be a good experience for Mr. Price, his reasoned explanation for his selection choice, and principally Mr. Wade's concurrence with the addition of HAMP to the vice president's responsibilities, which occurred well before the second protected activity, I find Mr. Price's May 13, 2010 discrimination complaint was not a contributing factor in Mr. Wade's June 28, 2010 decision to select Ms. Gray over Mr. Price based on their respective qualifications.

For these reasons, I conclude that none of Mr. Price's protected activities was a contributing factor in Mr. Wade's non-selection of Mr. Price for the new vice president position.

Mr. Edwards

Mr. Edwards did not participate in the June 28, 2010 interviewer's discussion or state his selection for vice president during that proceeding. At the end of the discussion, he concurred with the group's consensus that none of the four candidates, including Mr. Price, were sufficiently qualified for the vice president position. Although Mr. Edwards engaged in other activities prior to June 28, 2010 which favored Ms. Gray over the other applicants, the applicable adverse action in Mr. Price's SOX employment discrimination complaint is his non-selection to vice president, in which at most Mr. Edwards played an indirect role in concurring with the interviewers' determination. At the time of his concurrence, based on his direct involvement in both situations, Mr. Edwards was very aware of Mr. Price's first two protected activities.

In considering circumstantial evidence of causation, I first note that as I have previously determined Mr. Edwards was not angry about the Dallas report and did not view the findings as a criticism of him. Instead, while overwhelmed, he was receptive to the report, accepted its findings, and had the recommended 90-day plan implemented. On the other hand, while perhaps not rising to the level of anger or direct animosity, at a minimum, Mr. Edwards considered Mr. Price's May 13, 2010 discrimination complaint offensive for questioning his integrity, was hurt that Mr. Price didn't consider their exchange a father-son chat, and was frustrated by the resulting investigation.

In terms of temporal proximity, the sequence of events again proves helpful in assessing causation. Following the March 22, 2010 Dallas report presentation, to which Mr. Edwards did not adversely react, and after hearing Mr. Wade's recommendation of Mr. Price, which Mr. Edwards perceived contained reservations about Mr. Price's readiness, Mr. Edwards discussed Mr. Wade's recommendation with Ms. Fulcher. Ms. Fulcher also expressed reservations about Mr. Price as a candidate and opined that he wasn't the person they should select. Subsequently, but well before Mr. Price's second protected activity, Mr. Edwards chose Ms. Gray for the vice president position, in part based on the opportunity to combine HAMP with the new vice president position. That is, by April 12, 2010, while under the assumption that he could simply hire her into new position, Mr. Edwards had selected Ms. Gray. Consequently, since Mr.

Edwards did not harbor any animosity towards Mr. Price, and to the contrary had complimented him, for the March 22, 2010 presentation of the Dallas report, and in light of the timing of his selection of Ms. Gray for vice president well before Mr. Price's May13, 2010 discrimination complaint, neither of Mr. Price's first two protected activities was a contributing factor in his initial selection of Ms. Gray.

After Mr. Price's second protected activity, and while aware the vice president selection process would have to be competitive, Mr. Edwards continued to favor Ms. Gray, invited her to Dallas for the FHFA meetings, and subsequently advised Mr. Price of his selection of Ms. Gray prior to any interview. Yet, the probative force of those actions in terms of determining whether Mr. Price's second protected activity was a contributing factor in Mr. Edwards' concurrence with the decision of the interviewers is diminished for three reasons. First, as Mr. Price acknowledged, Mr. Edwards' continued bias for Ms. Gray was not only adverse to him but also the other candidates, who notably had not engaged in SOX protected activities. Second, while from his perspective Mr. Price understandably did not share Mr. Edwards' impression of their May 12, 2010 conversation, Mr. Edwards provided credible testimony about his intention to be frank with Mr. Price and let Mr. Price down easy without bruising his ego in part because of Mr. Wade's earlier agreement to add HAMP to the vice president position which he believed meant Mr. Wade also favored Ms. Gray. Consistent with that stated intention, Mr. Edwards advised Mr. Price that he was nevertheless a top candidate and offered to discuss other opportunities with him. And, third, although Mr. Edwards was not being fair with the other three applicants after the vice president competitive selection process had begun, his preference for Ms. Gray not only predated Mr. Price's second protected activity, he had chosen Ms. Gray well before he became aware that Mr. Price, as well as Ms. Oliver and Mr. Kanefield, would even become applicants for the vice president position; in other words, his continued bias for Ms. Gray over the other three candidates was neither specific to Mr. Price nor a purposeful effort to keep him out of the vice president position in part due to his May 13, 2010 protected activity.

Finally, returning to potential animosity towards Mr. Price for his May 13, 2010 discrimination complaint, I note Mr. Edwards' concurrence with the interviewer's determination would hardly prove satisfying as retaliation against Mr. Price because his agreement with the interviewer group actually ensured that his favored candidate, Ms. Gray, would not be promoted to vice president. The record contains little probative evidence that Mr. Edwards would take such an adverse action against his own interest just to make sure Mr. Price also was no longer considered for vice president.

Accordingly, upon consideration of the multiple aspects of circumstantial evidence, I find that none of Mr. Price's protected activities was a contributing factor in Mr. Edwards' concurrence with the interviewers' collective conclusion that none of the four applicants were sufficiently qualified for promotion to the new vice president position.

Final Considerations

Even if Mr. Price's second protected activity had been a contributing factor in Mr. Edwards' concurrence with the interviewers' decision, his determination was not the actual cause of Mr. Price's non-selection for the position of vice president. Instead, and most significantly, Mr. Price was not promoted to vice president because seven of the eight interviewers selected Ms. Gray for vice president, and the remaining executive picked Ms. Oliver; and neither of Mr. Price's protected activities was a contributing factor in their individual determinations that Mr. Price was not the first choice for vice president.

To the extent any causation connection existed between Mr. Price's protected activities and his non-selection for vice president, in addition to his failure to garner even one top choice for vice president by any interviewer, two significant interventions further severed any causal relationship. First, Ms. Wolfe's intervention by directing Mr. Edwards not to participate in interviewer's discussion precluded Mr. Edwards from having any impact on the presentation of their rankings, Mr. Neill's subsequent qualification concern, and the group's eventual determination that none of the applicants were qualified and external candidates should be solicited. Second, by expressing what a few of the other executives also thought about the insufficient qualifications of all four of the candidates, including Mr. Price, Mr. Neill's observation that none of the applicants were suitably qualified and suggestion to seek external candidates action also disrupted any link between Mr. Price's protected activities and his failure to be promoted to vice president.

Finally, to the extent that as the hiring executive Mr. Edwards may have had the final authority to reject the interviewer's consensus, and select the candidate who would be forwarded to the senior executive interview panel and potentially the Fannie Mae CEO, I first note that he did not exercise such authority. Additionally, in this case, Mr. Edwards' ability select the candidate he wanted despite the group's consensus that none of the applicants were sufficiently qualified was constrained since he shared hiring authority with Mr. Wade because the new vice president would also indirectly report to Mr. Wade. And, as previously discussed, Mr. Wade did not select Mr. Price for vice president.

Conclusion

None of the participants in the vice president selection process were aware of Mr. Price's third protected activity. Four of the eight interviewers who did not select Mr. Price for vice president were also not aware of his first two protected activities. Although the other four executives and director were aware of one or both of his first two protected activities, neither was a contributing factor in their non-selection of Mr. Price for vice president. Further, neither of Mr. Price's first two protected activities was a contributing factor in Mr. Edwards' concurrence with the interviewers' collective conclusion that none of the four applicants were sufficiently qualified for promotion to the new vice president position. Additionally, in addition to Mr. Price's non-selection for vice president by any interviewer, the actions of Ms. Wolfe and Mr. Neill severed any potential causation connection. As a result, even if Mr. Price's March 22, 2010 presentation, May 13, 2010 discrimination complaint, and June 16, 2010 clarification email were determined to be protected activities, Mr. Price has failed to establish that any of such protected activities was a contributing factor in his non-promotion to vice president. Accordingly, his SOX complaint must be dismissed.

ORDER

The SOX employment discrimination complaint of **Mr. Farley T. Price** against **Federal National Mortgage Assoc.** is dismissed.

SO ORDERED:

Digitally signed by RICHARD STANSELL-GAMM
DN: CN=RICHARD STANSELL-GAMM, OU=ADMINISTRATIVE LAW JUDGE, O=Office of Administrative Law Judges, L=Washington, S=DC, C=US
Location: Washington DC

RICHARD T. STANSELL-GAMM
Administrative Law Judge

Date Signed: September 26, 2014
Washington, D.C.

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of the administrative law judge's decision. See 29 C.F.R. § 1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by email with the Board, to the attention of the Clerk of the Board, at the following email address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or email communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. See 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. See 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed notifying the parties that it has accepted the case for review. See 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).