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United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
WASHINGTON, DC 20510-6075

LAURA SWANSON, STAFF DIRECTOR
BRAD GRANTZ, REPUBLICAN STAFF DIRECTOR

December 16, 2021

The Honorable Joseph R. Biden, Jr.
President of the United States of America
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

Dear Mr. President:

We write to express our significant concerns regarding irregular actions recently taken by some Directors of the Federal Deposit Insurance Corporation (FDIC), an independent agency charged with fulfilling the non-partisan mission of maintaining stability and public confidence in the nation's financial system.

On December 9, 2021, Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra and FDIC Director Martin Gruenberg published a joint statement claiming the FDIC had approved a Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions (RFI).¹ The statement, which was released by the CFPB, also purported to instruct the FDIC Executive Secretary "to record the vote in the minutes of the proceedings of the Board" and "transmit the Request for Information to the Federal Register."²

In fact, as FDIC clarified through official agency channels, the FDIC took no such vote, and this joint statement and the extracurricular activities to which it refers have no legal effect. The FDIC stated that "there was no valid vote by the Board, and no such request for information and comment has been approved by the agency for publication in the Federal Register."³

The FDIC also noted the "FDIC has longstanding internal policies and procedures for circulating and conducting votes of its Board of Directors, and for issuing documents for publication in the Federal Register."⁴ The disregard of FDIC policies and norms is particularly shocking in light of reporting that FDIC Chairman Jelena McWilliams, responding to Director Chopra and Director Gruenberg, had instructed career FDIC staff to draft and circulate for board member approval a neutral RFI that would comply with FDIC bylaws.⁵

¹ Joint Statement of Martin J. Gruenberg and Rohit Chopra, Members, FDIC Board of Directors, Request for Public Comment on the Bank Merger Act (Dec. 9, 2021), https://files.consumerfinance.gov/f/documents/cfpb_bank-merger-act-rfi_joint-statement_2021-12.pdf.

² *Id.*

³ FDIC Statement (Dec. 9, 2021), <https://www.fdic.gov/news/press-releases/2021/pr21101.html>.

⁴ *Id.*

⁵ Kate Davidson and Aubree Eliza Weaver, POLITICO (Dec. 10, 2021), <https://www.politico.com/newsletters/morning-money/2021/12/10/the-next-inflation-culprit-big-business-799406>.

Director Chopra and Director Gruenberg's statement and actions make clear that they violated FDIC procedures with the apparent goal of usurping the powers of the chairman and inhibiting her ability to carry out her official duties and responsibilities. In addition to violating the FDIC bylaws and processes,⁶ their actions upended an 88-year tradition of the FDIC board working on a collegial basis with its chairman as well as working independent from partisan political influence.

As a public servant who spent nearly four decades serving in the U.S. Senate, we believe you understand and hold deep respect for historical precedent, institutional norms, and courteous treatment of your colleagues—even in the face of political disagreement. America's independent financial regulators are respected the world over for their professionalism and integrity, and we fear the actions of Director Chopra and Director Gruenberg if left unchecked have the potential to weaken faith in our financial institutions and markets. We therefore urge you to rebuke Director Chopra and Director Gruenberg for their attempt to politicize the FDIC and compromise its neutrality and independence by disregarding its bylaws and its historical practice of conducting agency business through the chairman.

What makes Director Chopra and Director Gruenberg's actions especially troubling is that Director Chopra is an *ex officio* member of the FDIC board and Director Gruenberg is a temporary board member whose term expired three years ago.⁷ Congress has determined that serving on the FDIC's board is an important position that requires confirmation by the Senate. It is inappropriate for a director to continue serving on the FDIC board long after the expiration of his term in order to undermine its Senate-confirmed leader. We urge you to nominate promptly a candidate to replace Director Gruenberg, as well as a candidate to fill the vacant Vice-Chairman position on the FDIC board. These candidates should be well-qualified, mainstream individuals who will respect the institutional norms and practices that Director Chopra and Director Gruenberg have willfully chosen to ignore.

Thank you for your attention to this matter.

Sincerely,



Pat Toomey
U.S. Senator



Richard Shelby
U.S. Senator



Mike Crapo
U.S. Senator



Tim Scott
U.S. Senator

⁶ Bylaws of the FDIC, <https://www.fdic.gov/about/governance/bylaws.pdf>.

⁷ Nomination of Martin Gruenberg, Congress.gov, <https://www.congress.gov/nomination/112th-congress/674>.



M. Michael Rounds
U.S. Senator



Thom Tillis
U.S. Senator



John Kennedy
U.S. Senator



Bill Hagerty
U.S. Senator



Cynthia Lummis
U.S. Senator



Jerry Moran
U.S. Senator



Kevin Cramer
U.S. Senator



Steve Daines
U.S. Senator