

Dec. 16, 2021

The Honorable Joseph Biden
President
1600 Pennsylvania Ave, NW
Washington, DC, 20500

Dear President Biden,

The undersigned express our support for efforts by the majority of the board of the Federal Deposit Insurance Corp (FDIC) to govern the agency lawfully, according to its statute and bylaws, and we condemn Chair Jelena McWilliams's lawless attempts to override them and control the agency on her own.

At immediate issue is a Request for Information (RFI) regarding bank mergers approved by a majority of the board. Chair McWilliams has blocked publication of this RFI in the Federal Register. If Chair McWilliams refuses to submit to lawful governance by a majority of the FDIC Board, you should not hesitate to remove her from office. There is an open legal question whether FDIC Board members are removable at will or only for cause, but McWilliams's conduct—openly flouting and attempting to subvert lawful decisions by the majority of the FDIC Board—satisfies even the higher standard.

The FDIC board is statutorily composed of five members, four of which are currently occupied. On December 9, 2021, the majority of the Board approved the RFI regarding agency's policy on bank mergers. According to public reports, approval of this request began Nov. 23, 2021, with a "circulation of written items," (or a "notational" vote) as provided by the FDIC's bylaws, and closed Dec. 7, 2021.¹ Board members Rohit Chopra and Martin Gruenberg issued a joint statement announcing the RFI in the afternoon of Dec. 9.² Subsequently, a statement was posted on the FDIC website disclaiming the RFI on the basis that it was not "approved by the FDIC" and "there was no valid vote by the Board."³ Public reports also state that McWilliams has stopped FDIC staff from transmitting the RFI for official publication.

The Federal Deposit Insurance Act (FDI Act) vests FDIC authority in the Board. The FDIC's bylaws, in turn, state that a majority of the Board controls the agency's actions. Specifically, the bylaws state: "The management of the Corporation shall be vested in a Board of Directors consisting of 5 members." Further, Section 5 of Article IV of the FDIC's bylaws establishes that a majority vote of the Board "shall be the act of the Board of Directors." Since the bylaws state that the "the management of the Corporation shall be vested in the Board of Directors," this means not only that the adoption of the RFI conformed with the bylaws, but also that the statement issued under the banner of the FDIC declaring the RFI void was illegitimate and in violation of the bylaws.

Chair McWilliams has demonstrated that she is not fit to serve in this important role. Commandeering the moniker of the FDIC to voice her minority opinion and attempting to block the legal actions of the

¹ Bylaws of the Federal Deposit Insurance Corp, FDIC (website accessed Dec. 10, 2021) <https://www.fdic.gov/about/governance/bylaws.pdf>

² *Joint Statement of Martin J. Gruenberg and Rohit Chopra*, CONSUMERFINANCE.GOV (Dec. 9, 2021) https://files.consumerfinance.gov/f/documents/cfpb_bank-merger-act-rfi_joint-statement_2021-12.pdf

³ *FDIC Statement on CFPB Statement*, FDIC (website visited Dec. 9 and 10) <https://www.fdic.gov/news/press-releases/2021/pr21101.html>

majority of the board constitute grave misconduct. We respectfully call on you, Mr. President, to remove the chair if she does not quickly relent."

Sincerely,

Accountable.US,
American Economic Liberties Project,
Americans for Financial Reform,
Center for Digital Democracy,
Climate First!,
Consumer Action,
DemCast USA,
Demand Progress Education Fund,
Empire Justice Center,
The Freedom BLOC,
Friends of the Earth,
Institute for Agriculture and Trade Policy,
MOVI, Money Out Voters In,
New Jersey Citizen Action,
Oil Change U.S.
Open Markets Institute,
Public Citizen,
Rainforest Action Network
Revolving Door Project,
350 Butte County, 350.org,
Prof. Richard Painter (Univ of Minn. Law),
Prof. Michael Greenberger (Univ of Md. Law),