

December 14, 2021

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Dear Mr. Chopra:

On December 9, 2021, you issued a confusing joint statement with Martin Gruenberg that implied the Board of the Federal Deposit Insurance Corporation (FDIC) voted to approve a Request for Information and Comment on the bank merger process.¹ The statement—which was released by the Consumer Financial Protection Bureau—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 Of course, the FDIC took no such vote, and your joint statement and the extracurricular activities to which it refers have no legal effect.

In fact, the FDIC issued a contradictory statement, which, unlike yours, was released through official agency channels. With respect to your joint statement, the FDIC wrote, “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’s official statement makes clear your attempt to bypass the Chairman and set the agency’s agenda is illegitimate. That conclusion is supported by the FDIC’s bylaws, which require special meetings requested by any two members of the Board to be called by the Executive Secretary.⁴ Your joint statement made no reference to whether or how notice was circulated to Board members, if at all. Indeed, the Board met today and took no action with respect to the Request for Information and Comment (RFI) on the bank merger process, and your motion to include the RFI vote in a summary of today’s agenda was ruled out of order due to procedural deficiencies. Moreover, the RFI has not been transmitted to the Federal Register, presumably because the process by which the RFI was authorized is invalid.⁵

¹ Joint Statement of Martin J. Gruenberg and Rohit Chopra (Dec. 9, 2021), https://files.consumerfinance.gov/f/documents/cfpb_bank-merger-act-rfi_joint-statement_2021-12.pdf.

² *Id.*, footnote 1.

³ FDIC Statement (Dec. 9, 2021).

⁴ BYLAWS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION, Art. 4, Sec. 6 (b).

⁵ FDIC Board Matters, <https://www.fdic.gov/news/board-matters/>.

Today's meeting made clear that your actions with respect to the RFI on bank mergers is the beginning of your attempt to co-opt the authority of the Chairman, not the end. In addition to violating the FDIC bylaws, your actions will upend the FDIC's 88-year tradition of considering the Chairman's agenda on a collegial basis and independent from the White House's influence. You also exposed the FDIC's Bank Merger Act reform process to litigation, particularly if the agency considers any comments submitted in response to your legally deficient solicitation.

This action, however reckless and ill-conceived, was certainly the product of deliberations between you and those who organized and participated in the sham vote and joint statement. Considering the FDIC itself considers the vote invalid and the joint statement about the vote was issued by the CFPB, it appears the process for planning and executing this end run around the Chairman may have occurred via communications that occurred outside the FDIC's systems and may therefore be unavailable from the FDIC.

It is therefore necessary that you preserve all relevant documents and communications that may refer or relate to the actions in question, including those on official governmental accounts and/or personal, non-governmental accounts.

Specifically, this preservation request should be construed as an instruction to preserve all documents, communications, and other information, including electronic information and metadata, that is or may be potentially responsive to a congressional inquiry, request, investigation, or subpoena that may be initiated or otherwise undertaken by a committee of Congress or any other investigative entity.

The Rules of the House of Representatives for the 117th Congress set forth the jurisdiction of the Committee on Financial Services to include banks and banking, including deposit insurance, and as such the records preserved pursuant to this request are within the scope of the Committee's investigative and legislative prerogatives.

For purposes of this request, "preserve" means securing and maintaining the integrity of all relevant documents, communications, and other information, including electronic information and metadata, by taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, mutation, or negligent or reckless handling that could render the information incomplete or inaccessible. This includes preserving all compilations of documents that have already been gathered in response to requests, even if copies of individual documents may still exist elsewhere in the agency. I further request that you or your designee:

1. Exercise reasonable efforts to identify and notify all relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, and consultants who may have access to potentially relevant information that they should preserve and return such information to the FDIC;
2. Exercise reasonable efforts to identify, recover, and preserve any potentially relevant electronic information that has been deleted or marked for deletion but is still recoverable;

3. Remind all relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, and consultants that any federal records sent or received using a nonofficial account must be forwarded to the agency for proper archiving, and forward all such material in your possession;⁶ and
4. If it is the routine practice of yours, or any relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, or consultants to destroy or otherwise alter potentially relevant information, either halt such practices as they relate to the potentially relevant information or arrange for the preservation of complete and accurate duplicates (including metadata) of such documents, communications, or other information.

Please advise in writing as to how you will ensure all records relevant to this matter will be preserved. Thank you for your attention to this request.

Sincerely,



Patrick McHenry
Ranking Member



Tom Emmer
Ranking Member
Subcommittee on Oversight
and Investigations



Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer Protection
and Financial Institutions

cc: The Honorable Maxine Waters, Chairwoman
Committee on Financial Services

Seth Frotman, General Counsel
Consumer Financial Protection Bureau

⁶ See 44 U.S.C. § 2911 (requiring disclosure of official business conducted on nonofficial electronic messaging accounts).