

June 27, 2022

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

Dear Director Chopra:

In April 2022, you appeared before the House Committee on Financial Services and Senate Committee on Banking to testify and present the Bureau's semi-annual report to Congress. During those hearings, Republicans on both committees asked questions about the process by which you, Acting Comptroller of the Currency Michael Hsu, and then-Federal Deposit Insurance Corporation (FDIC) Director Martin Gruenberg wrested control of the FDIC's agenda from former Chair Jelena McWilliams—an effort that began in earnest on or around October 13, 2021, when you joined the FDIC Board of Directors.

Your testimony created the appearance that lawyers at the relevant agencies collectively analyzed the FDIC's bylaws and endorsed the process by which you and the other directors co-opted the FDIC. They did not. In fact, according to information obtained by Financial Services Committee Republicans, lawyers at the Office of the Comptroller of the Currency (OCC) did not assist whatsoever. We are writing to provide an opportunity to clarify or amend your testimony and resolve the discrepancy between your statements to Congress and the facts.

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On December 6, 2021, you, Hsu, and Gruenberg conducted a so-called notational vote to approve a "Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions."¹ You did so despite prior guidance from the FDIC general counsel that stated, "The Bylaws of the Federal Deposit Insurance Corporation do not confer authority to an individual Board member to circulate an item for a notational vote."²

The next day, December 7, 2021, you issued a letter to the FDIC General Counsel that purported to validate the notational vote and instruct the FDIC Executive Secretary to record the

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 Letter from Nicholas Podsiadly, General Counsel, Fed. Deposit Ins. Corp. to Rohit Chopra, Director, Consumer Fin. Prot. Bureau (Nov. 26, 2021).

vote in the minutes of the proceedings of the Board.³ Your letter also claimed to “authorize[] the Executive Secretary to transmit the Request for Information to the Federal Register for publication.”⁴ The majority of the Board’s invalid actions further authorized the FDIC Executive Secretary to transmit the Request for Information to the Federal Register for publication.⁵

An eight-page memorandum regarding the authority of the FDIC Board with respect to written voting was attached to your letter. The memorandum’s extraordinary conclusion—that extra-procedural written votes may constitute an official Board decision and that the circulation and recognition of such votes “is not under the control of the FDIC Chairperson, General Counsel, or Executive Secretary”—effectively upended the FDIC’s 88-year tradition of considering the Chairman’s agenda on a collegial basis.⁶

Neither your letter nor the enclosed memorandum identified its author, or even whether the memorandum represented a consensus among the relevant agencies versus the opinion of the Consumer Financial Protection Bureau (CFPB) alone. To be clear, it is material to the Committee’s inquiry whether the OCC had weighed in on this issue, particularly because the memorandum’s legal analysis was contrary to the position of the FDIC’s own general counsel.

On April 26, 2022, before the Senate Committee on Banking, you testified in response to questions regarding the origins of the memorandum.⁷ In an exchange with Sen. Pat Toomey, the Ranking Member of the Committee, you stated:

TOOMEY. Let me ask you this. Did Todd Phillips or anybody at the Center for American Progress contribute to the drafting of this legal document to your knowledge?

CHOPRA. No.

TOOMEY. They did not. So who did?

CHOPRA. So the general counsels of all of the agencies involved in the board were obviously concerned about the lack of legal justification proffered by the FDIC’s general counsel. We also understand the FDIC’s general counsel muzzled many of the career staff . . .

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³ Letter from Rohit Chopra, Director, Consumer Fin. Prot. Bureau to Nicholas Podsiadly, General Counsel, Fed. Deposit Ins. Corp. (Dec. 7, 2021).

⁴ *Id.*, footnote 1.

⁵ 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.

⁶ Letter from Rohit Chopra, Director, Consumer Fin. Prot. Bureau to Nicholas Podsiadly, General Counsel, Fed. Deposit Ins. Corp. (Dec. 7, 2021).

⁷ The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress, Hearing Before the S. Comm. on Banking, 117th Cong. (2022) (testimony of Hon. Rohit Chopra, Director, CFPB).

TOOMEY. OK, but I asked a simple question. Who -- who -- who worked on drafting this document?

CHOPRA. **So the general counsels and legal advisors of . . .**

TOOMEY. OK, so the CFPB...

CHOPRA. **And the OCC.**

TOOMEY. . . . and the OCC general counsels.⁸

When you appeared before the House Committee on Financial Services the next day, Rep. Blaine Luetkemeyer asked whether the OCC general counsel agreed with the memorandum's conclusions. You stated:

CHOPRA. **You would have to ask the OCC that.** It is not my place to say what the OCC thinks. What I shared was that it was a major discussion across all the --

LUETKEMEYER. Well yesterday, Mr. Chopra -- Director Chopra -- yesterday in Senate Banking Committee, you indicated that the OCC and the CFPB general counsel worked on that memo together. You are not aware of that?

CHOPRA. I don't believe that. **What I said was that the legal issues were discussed across the agencies . . .**⁹

Your testimony indicated that both the CFPB and the OCC were involved in analyzing the FDIC's bylaws. You further advised us to "ask the OCC," and we did. In response to a letter from Committee Republicans, the Acting Comptroller stated "OCC's legal staff did not assist the CFPB with any drafting or review of an opinion or memo that analyzed the FDIC Board's bylaws."¹⁰ The OCC also represented there are no communications between the CFPB and OCC referring or relating to the memorandum in question.

Congress relies upon truthful information to make informed decisions and to conduct effective oversight and, accordingly, federal law prohibits false statements to committees of Congress.¹¹ In light of the discrepancy between the Acting Comptroller's statement and your testimony, and because of the serious implications for providing false testimony, please clarify or

⁸ *Id.*

⁹ Consumers First: Semiannual Report of the Consumer Financial Protection Bureau, Hearing Before the H. Comm. on Fin. Services, 117th Cong. (2022) (testimony of Hon. Rohit Chopra, Director, CFPB).

¹⁰ Letter from Michael Hsu, Acting Comptroller, Off. of Comptroller of Currency to Hon. Patrick McHenry (Jun. 7, 2022).

¹¹ Pursuant to 18 U.S. Code Sec. 1001(a)(2), whoever, within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully "makes any materially false, fictitious, or fraudulent statement or representation" shall be fined or imprisoned.

amend your testimony as soon as possible. Please also produce any documents and communications that are relevant to this matter, particularly those that we requested on March 7, 2022.

Please provide your response as soon as possible, but no later than July 11, 2022. Contact Nicholle Vo of the Committee's minority staff at nicholle.vo@mail.house.gov with any questions about this request. Thank you for your attention to this important matter.

Sincerely,



Patrick McHenry
Ranking Member



Blaine Luetkemeyer
Ranking Member on the
Subcommittee on Consumer
Protection and Financial
Institutions