



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Statement of CFPB Director Rohit Chopra

Member, FDIC Board of Directors

December Open Meeting of the Board

December 14, 2021

Today, I am pleased to join my first public meeting as a Member of the Board of Directors of the Federal Deposit Insurance Corporation.

The Federal Deposit Insurance Corporation has long been a point of pride for the United States. This is not simply because the Corporation ensures the safety of trillions of dollars of insured deposits, but because of the pivotal actions that the Board has taken – sometimes in the middle of the night during crises – to ensure stability and confidence in the financial system.

The FDIC Board must be ready and able to act with decisiveness, especially in times of stress. This requires that the Board invest in meaningful consultation, and deliberate together in closed and open sessions, like the one we will have today.

Competition in Financial Services

On July 9, 2021, President Biden signed an executive order directing members of his Administration to pursue a series of actions to promote competition across the economy, including in markets for transportation, telecommunications, health care, labor, and more. Promoting competition should be a whole-of-government effort, and I have decided to make this a key priority for my work as Director of the Consumer Financial Protection Bureau and as a Board Director of the Federal Deposit Insurance Corporation.

The July order specifically requested that bank regulators review policies with respect to the Bank Merger Act. The President understands and respects the role of independent agencies, and he has not sought to order a specific regulatory action by the banking regulators. However, he requested that the Attorney General and bank regulators review current guidelines and adopt a plan to revitalize bank merger oversight.¹ Although the FDIC is an independent agency, conducting this review is sensible to ensure that the agency's merger policies promote fair competition in banking markets.

In many ways, such a review is also overdue. Congress amended the Bank Merger Act standards in 2010, however, regulators have not provided clarity on how these amendments will be implemented in practice. Indeed, the FDIC's Statement of Policy on Bank Merger Transactions does not even mention the new statutory factor on financial stability enacted over a decade ago.² Moreover, the banking sector has experienced significant consolidation over the past 30 years.

¹ The plan is due 180 days from July 9, 2021, which is just three weeks away.

² FDIC Statement of Policy on Bank Merger Transactions, available at <https://www.fdic.gov/regulations/laws/rules/5000-1200.html>

The President's request to conduct a review is completely reasonable. While members of the Board may differ on what, if any, new policies should be enacted, we should quickly solicit input from the public to identify potential policy options.

Unsafe and Unsound Governance

Since joining the Board in October, there have been a number of concerning representations made by certain Corporation officers about board governance. In my board member orientation, I was informed that it was the view of the Board's General Counsel that board members may not raise matters for discussion in board meetings, and only the Chairperson has this right. Although the Corporation's bylaws specifically authorize two board members to call for special meetings, the General Counsel has taken the perplexing view that those board members cannot guarantee that any topics will actually be discussed.

In late October, my fellow Directors and I circulated a draft Request for Information on the Bank Merger Act with the intention of releasing it jointly with the Office of the Comptroller of the Currency. This was not a draft rule or guidance document – it was largely a series of questions to solicit input, given the President's reasonable request, the need to incorporate the Dodd-Frank Act's amendments, and the long-term trend in consolidation. This should have been a no-brainer where consensus could easily be achieved. But because of the General Counsel's improper assertion that the Chairperson had implicit veto power, the draft was not given appropriate attention. Directors Gruenberg, Hsu, and I waited for feedback, but to no avail.

On November 16, Directors Gruenberg, Hsu, and I also wrote a letter asking the FDIC's Executive Secretary to circulate the draft to key divisions of the agency for technical and legal review. Presumably at the direction of the General Counsel, the Executive Secretary declined to circulate it. Then, on November 18, we made a direct request to the heads of the Division of Risk Management Supervision, Division of Complex Institution Supervision and Resolution, Division of Depositor and Consumer Protection, and the General Counsel to directly solicit staff input. We did not receive any technical or legal input by the requested deadline.

While the General Counsel took the unusual, and legally dubious, view that board members did not have the ability to assure that items be discussed in board meetings, the governing documents of the Corporation do authorize the Board to conduct business through written or "notational" voting. Importantly, notational voting allows any member to direct any matter circulated for a vote to a board meeting, rather than finalizing it in writing.

On November 26, I moved for a vote a resolution directing the publication of the Request for Information jointly with the Office of the Comptroller of the Currency, with the vote closing on December 6, 2021. We anticipated that the Chairperson would redirect the matter to a Board meeting, which would at least guarantee discussion and a path to resolution. My hope was that this would hasten the path to consensus or conclusion.

Hours before the voting period closed, we received a last minute "alternative" to the Request for Information with a series of strings attached. It was wholly unacceptable and was clearly a tactic to delay action on anything related to President Biden's request.

Directors Gruenberg, Hsu, and I cast our votes in the affirmative, but the Chair did not exercise her right to move the matter to a board meeting for discussion. Astoundingly, the General Counsel asserted, without any legal justification, that the vote of the supermajority of the Board was invalid. We have provided extensive legal support for why this vote was valid but have received no reply at all from the General Counsel to defend his extreme view. We have essentially been instructed to accept an edict, but doing so would breach our fiduciary duties.

This approach to governance is unsafe and unsound. It is also an attack on the rule of law.

Restoring Order and Rule of Law

One of the best publications that the FDIC makes available is the Pocket Guide for Directors, first issued in 1988, as an aid to directors of insured banks. The guide reminds bank board members that they must be independent of management, noting that “directors who routinely approve management decisions without exercising their own informed judgment are not adequately serving their institutions...”

This statement also applies to the FDIC’s own board. To retain our standing and credibility in the markets and in the world, we must clearly communicate to Corporation management and the public that no individual board member, even the Chairperson, can unlawfully veto a supermajority of the board. Once this normal order and rule of law is accepted by all, it will set the stage for a functional and collaborative board.

We must resolve this matter immediately. We cannot risk having a paralyzed board, especially if action is urgently needed in times of financial system distress. Absent a return to legal reality and constructive engagement, board members will need to take further steps to exercise independence from management and to ensure sound governance of the Federal Deposit Insurance Corporation.