

**NOMINATIONS OF MARTIN GRUENBERG,  
TRAVIS HILL, JONATHAN MCKERNAN, AND  
KIMBERLY ANN MCCLAIN**

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**HEARING**

BEFORE THE

**COMMITTEE ON**

**BANKING, HOUSING, AND URBAN AFFAIRS**

**UNITED STATES SENATE**

**ONE HUNDRED SEVENTEENTH CONGRESS**

**SECOND SESSION**

**ON**

**NOMINATIONS OF:**

**MARTIN GRUENBERG, OF MARYLAND, TO BE A MEMBER AND CHAIRPERSON  
OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE  
CORPORATION**

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**TRAVIS HILL, OF MARYLAND, TO BE A MEMBER AND VICE CHAIRPERSON OF  
THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE  
CORPORATION**

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**JONATHAN MCKERNAN, OF TENNESSEE, TO BE A MEMBER OF THE BOARD  
OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION**

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**KIMBERLY ANN MCCLAIN, OF MARYLAND, TO BE AN ASSISTANT SECRETARY  
OF HOUSING AND URBAN DEVELOPMENT**

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**NOVEMBER 30, 2022**

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**NOMINATIONS OF MARTIN GRUENBERG,  
TRAVIS HILL, JONATHAN MCKERNAN, AND  
KIMBERLY ANN MCCLAIN**

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**WEDNESDAY, NOVEMBER 30, 2022**

U.S. SENATE  
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS  
*Washington, DC.*

The Committee met at 10 a.m., via Webex and in room 538, Dirksen Senate Office Building, Hon. Sherrod Brown, Chairman of the Committee, presiding.

**OPENING STATEMENT OF SENATOR SHERROD BROWN**

Chairman BROWN. The Senate Committee on Banking, Housing, and Urban Affairs will come to order. Good to see Senator Corker, who used to sit over there, over there wherever he sat, depending on the situation. So nice to see you.

This hearing is in a hybrid format. Our witnesses are in person. Members have the option to appear either way.

The Committee meets today to consider four nominations: the Honorable Martin Gruenberg to be a Member and Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation; Mr. Travis Hill to be a Member and Vice Chair of the FDIC; Ms. Jonathan McKernan to be a Member of the Board of Directors of the FDIC; and Dr. Kimberly McClain to be Assistant Secretary for Congressional and Intergovernmental Relations at the Department of Housing and Urban Development.

Welcome, all of you. We thank the nominees for appearing. We thank them for their willingness to serve our country. We welcome their family and friends who are in attendance as well as those watching from home.

FDIC is responsible for ensuring deposits and supervision of some 5,000 banks and savings associations. The agency is governed by a board of directors which Congress has authorized to fulfill its mission to, quote, "maintain stability and public confidence in the Nation's financial system." All five members of the board are appointed by the President, confirmed by the Senate. The board is tasked with governing the FDIC.

Today our Committee will consider three of these five seats on the board, including the Chair and Vice Chair nominees.

Marty Gruenberg is the President's nominee to serve as FDIC Chair. He is exceptionally well qualified. He has dedicated his career to serving the public, ensuring that our banking system is safe and strong. Since 2005, he has served as a Nation of the FDIC

board of directors in various capacities, as Chair, as Acting Chair, as Vice Chair, as a Member. The Senate has unanimously—unanimously—confirmed Mr. Gruenberg five times.

During his tenure on the FDIC board he has been a fierce defender of consumers and taxpayers and small businesses, the people who make this country run. He has also seen our banking system at its highest and its lowest points. He has helped ensure the stability of this system through the great 2008 recession. Under his leadership, the agency has put in place important safeguards following the financial crisis, taken steps to strengthen the Community Reinvestment Act. He has worked with banks to prepare for the risks that pose threats to our financial system, like cyberthreats and climate change.

He has the experience and dedication we need. If confirmed, he will continue working to protect our financial systems so that when Americans place their money in FDIC-insured banks they know their money will be protected. At his nomination hearing to be Chair more than decade ago, Senator Sarbanes, whom Mr. Gruenberg staffed on this very dais, said, quote, “Marty is extremely well prepared to serve as its Chair. He would bring, right from the beginning, stability and continuity to the work of the FDIC.” Those words actually ring even more strongly today.

It has been only a few weeks since you last appeared before us, Mr. Gruenberg. Welcome.

Travis Hill is nominated to serve as Vice Chair of the FDIC. More recently, Mr. Hill served as Senior Advisor to the former Chair of the FDIC, Jelena McWilliams, and Deputy the Chair for Policy. Before joining FDIC in 2018, he worked on the staff of this Committee, for Senator Shelby and Senator Crapo, both of whom are here at the beginning of the hearing. Thank you.

Jonathan McKernan is nominated to serve as a Member of the Board of Directors at FDIC. Since 2019, Mr. McKernan has served as the Financial Housing Finance Agency. He is currently on detail from FHFA to Ranking Member Toomey’s Banking and Housing Committee staff. Prior to joining FHFA, Mr. McKernan served at the Treasury Department. Before Treasury, he worked for our former colleague, Senator Corker. Early in his career, Mr. McKernan worked in private law practice here in Washington.

Mr. Hill and Mr. McKernan, if confirmed as the two newest Nations, will be joining the agency at a critical time as the country emerges from the pandemic and the banking system faces new challenges. I would like to hear from the two of you how you will approach working with Mr. Gruenberg as the Chair. He has been in your position for years also so he knows both ends of that, how you will protect consumers, serve all Americans, and stay ahead of risks to our financial system. I expect financial regulators to demonstrate that they are committed to serving Main Street, not Wall Street. You know how this Committee has changed under this chairmanship.

Finally, our last nominee before the Committee is Dr. Kimberly McClain, President Biden’s nominee to serve as Assistant Secretary for Congressional and Governmental Relations at the Department of Housing and Urban Development. HUD’s programs help create equal access to opportunity for all through responsible access to

housing, credit, promotion of fair housing assistance to help renters and those experiencing homelessness to find safe and stable homes and support for States, tribes, local governments as they address their housing and community development challenges. If confirmed, Dr. McClain will manage an office responsible for coordinating with congressional offices and Federal, State, and local government agencies.

Dr. McClain is an Air Force veteran. She serves currently as Deputy Assistant Secretary for Lege Affairs at the Department of Veterans Affairs. She possesses some 30 years of combined legislative, international affairs, and policy experience. Before joining the VA, Dr. McClain worked as Director for Congressional Strategy at the Air Force. Welcome, Dr. McClain. Thank you for your years of dedicated service to this country also.

Ranking Member Toomey.

#### **STATEMENT OF SENATOR PATRICK J. TOOMEY**

Senator TOOMEY. Thank you, Mr. Chairman. I, too, would like to welcome back our former colleague, Senator Corker. Great to see you back at the Committee again.

As you pointed out, we are here today to consider four nominations—Mr. Gruenberg, Mr. Hill, Mr. McKernan, and Ms. McClain, to the posts that you listed.

The FDIC nominations represent a long-overdue return to normal order. The agency has not been governed by a full, five-member board since 2015, and has not had a Vice Chairman for over 4 years. But more troubling, after former Chairman Jelena McWilliams was virtually forced out in February, the board has been comprised of only three members, all of the same political party, and two of whom served in an acting capacity.

While I commend the Biden administration for finally nominating a full slate of FDIC directors, including a permanent Chairman and a Vice Chairman, I have several concerns with Acting Chairman Gruenberg's nomination to again serve in that role permanently, based on his previous actions. Last year, Mr. Gruenberg helped to lead a partisan power grab at the FDIC board, under which he and his fellow Democrat board members disregarded nearly 90 years of agency precedent of allowing the Chair to set the agency's agenda. Until this coup, which forced out Chairman McWilliams, all FDIC board members, Democrat and Republican, had followed this precedent.

During the Obama administration, the Department of Justice and financial regulators launched the now-infamous Operation Choke Point. This program attempted to coerce banks into denying services to lawful yet politically disfavored businesses, such as firearm manufacturers and payday lenders. The FDIC's own inspector general found that FDIC personnel targeted these businesses, and I quote, "consistent with a widely held understanding that the highest levels of the FDIC disfavored these types of banking services," end quote.

Well, the highest levels of the FDIC, of course, included Mr. Gruenberg, who led the FDIC from 2011 through mid-2018.

And we know from court documents, in Operation Choke Point-related litigation, that Mr. Gruenberg and his team played a role

in directing banks to cease relationships with payday lenders. I remain concerned that some of the left still believe in Choke Point's central tenet, that financial regulators should misuse their regulatory apparatus to debank or limit credit to lawful yet politically disfavored businesses. As we have seen in word and deed from other nominees, this is a very real threat to businesses, especially in the traditional energy sector.

I worry that this pattern of pressuring banks not to provide services to lawful but disfavored businesses may be again emerging at Mr. Gruenberg's direction. Earlier this year, my office received whistleblower reports that the FDIC has been deterring banks from doing business with crypto-related companies. I understand that one paused activity is custody of crypto assets. While this activity has not disappeared but rather has simply migrated to less-regulated companies, often in foreign jurisdictions with weaker regulatory regimes. And we have recently seen how that can end.

Finally, based on Mr. Gruenberg's 9 months as Acting Chair as well as the events that led to his time in that role, I am concerned that he may continue to politicize the agency. On his very first day as Acting Chair, Mr. Gruenberg announced that the FDIC would join the Network for Greening the Financial System. This is an international group committed to denying capital to carbon-emitting industries. Now while I appreciate his recent acknowledge that, and I quote, "credit allocation decisions are responsibilities of financial institutions," end quote, the statement appears to be in conflict with this action. If confirmed, I urge Mr. Gruenberg to depoliticize the agency's work and restore the FDIC's independence.

Today we will also hear from Travis Hill and Jonathan McKernan. Both nominees are extremely well qualified to serve on the FDIC board. Mr. Hill's significant experience in both the Legislative and Executive branches will deepen the FDIC's board's expertise and enhance the quality of its deliberations. As Senior Counsel on the Banking Committee he worked on several pieces of bipartisan legislation, over several Congresses, and during his time as an advisor to former FDIC Chair McWilliams he spearheaded numerous policy initiatives, worked constructively with agency career staff, and other board members. I commend him for his public service and I look forward to hearing how he will approach his role as FDIC Vice Chair.

In a few moments Senator Corker will introduce Mr. McKernan, an exceptional nominee with valuable private sector experience and a commitment to public service. I have personally worked with Jonathan during his time as an FHFA attorney detailed to the Banking Committee. I know firsthand that his knowledge of banking and housing finance issues will equip him well to serve on the FDIC board, and in addition to his substantive expertise I have been impressed by his diligence and character, and I look forward to supporting his nomination.

Thank you, Mr. Chairman.

Chairman BROWN. Thank you, Senator Toomey.

Senator Van Hollen will introduce the Chairman, the Chairman designee, Senator Crapo will then introduce the Vice Chair des-

ignee Hill, and then Senator Corker will introduce the third nominee. So Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman, Ranking Member Toomey, colleagues. Senator Corker, great to see you.

I am really pleased and privileged to say a few words on behalf of the President's nominee to serve as Chairman of the FDIC, Mr. Gruenberg. Now I know Mr. Gruenberg is well known to Members of this Committee. He has served with great distinction. He has been the longest-serving member of the board of the FDIC. He served as Vice Chair and Chair. He played a critical role as Vice Chair in response to the global financial crisis, and then as Chair overseeing the recovery of the financial industry under the jurisdiction of the FDIC.

What many may not know, although I know some do, is that Marty Gruenberg also served with great distinction for over 20 years as a staff member on this Committee for a former Maryland Senator, Paul Sarbanes, somebody who I respected greatly. And at that time I also served as a staff member for another Maryland Senator, in the late 1980s—we are dating ourselves, Marty—Mac Mathias, a liberal Republican Senator from Maryland.

And so Marty Gruenberg and I overlapped during that period of time. I later worked as a staff member on the Senate Foreign Relations Committee. And I can tell you this, and I think you know this. You can disagree with Marty Gruenberg on issues, but I dare say nobody can question his integrity and his commitment to public service, his determination to listen to all sides before making up his mind and reaching a decision, and that is exactly the kind of person we want as Chair of the FDIC.

So it is great to see you again, Marty Gruenberg, and I commend his nomination and confirmation to all my colleagues. Thank you, Mr. Chairman.

Chairman BROWN. Thank you, Senator Van Hollen.

Senator CRAPO will introduce Mr. Hill.

Senator CRAPO. Thank you very much, Mr. Chairman, and Senator Corker, it is great to see you back here in the room. I appreciate the opportunity I had to serve with you. Senator Toomey, thank you also for your remarks.

I have the privilege of introducing Travis Hill today, a former staffer of mine and no stranger to the Members who have been on this Committee over the past several years. Travis joined the Senate Banking Committee in 2013, and worked on a bipartisan basis on some very difficult, complex issues, from housing finance reform to legislation to right-size regulation for financial institutions, serving under both then-Chairman Shelby and myself as Chairman.

Travis worked diligently on the Economic Growth, Regulatory Relief, and Consumer Protection Act, or S. 2155, which tailored regulation to risk for financial institutions in order to promote economic lending, and also made it easier for consumers to obtain credit, and increased important protections for veterans, senior citizens, victims of fraud, and those who fall on hard financial times.

This bill was the product of a thorough, robust process and honest bipartisan negotiations, and Travis worked closely with many Members of this Committee and their staff, from beginning to finish. His intellect, integrity, and deep understanding of the financial

services legal and regulatory landscape have earned him the respect of all who have had the pleasure of working with him. Travis understands the need to balance safety and soundness while enabling a vibrant, growing economy, and has demonstrated this understanding at the FDIC, as the agency faced unprecedented challenges during the pandemic.

As financial markets and the economy experienced significant stress and volatility, he played a key role in implementing measures to mitigate the impact of the pandemic on the U.S. financial system and to support American households, communities, and small businesses.

Travis has the experience and the qualifies to do this job well, and I am confident that he will bring the same diligence, work ethic, expertise, and respect for Congress that he exemplified during the time he worked here for me. I am proud to support his nomination and look forward to seeing him confirmed promptly.

Thank you, Mr. Chairman.

Chairman BROWN. Thank you, Senator Crapo.

And Senator Corker will introduce Mr. McKernan. Bob, welcome.

Senator CORKER. Mr. Chairman and Ranking Member, Members of the Committee, it is quite an honor, if you can imagine, to be here, and a privilege to serve with all of you. Thank you for what you continue to do. I know a couple of Members are leaving. Just for what it is worth, it is not that bad on this side of the dais. So anyway, I thought it would be.

Jonathan grew up in East Tennessee. He stayed there for college, studying at University of Tennessee, where he received a bachelor's and master's degree in economics and graduated at the top of his undergraduate class. After college, he studied in Moscow, Russia, as a National Security Education Program Boren Fellow, and then attended law school at Duke University, where he graduated with high honors.

Jonathan has since spent the last 15 years focused on financial services, regulation, and policy. He started as a banking lawyer in private practice, first at the law firm of Hogan & Hartson and then at Wilmer Hale, where he advised community banks and other financial institutions on a wide range of issues under the Federal and State banking laws.

Jonathan has spent almost 6 years in Government service. He got his start in Government as a financial services policy advisor to our office, and in that role he supported our bipartisan effort with several Members of this Banking Committee, on both sides of the aisle, to negotiate housing finance reform legislation, which I know there is still work to do there. Jonathan then went to work as a policy advisor at the Department of Treasury and to the FHFA, and has been on detail from FHFA to the Banking Committee's minority staff since January 2021.

I know all of you know the great pride in being able to support someone's nomination that you have worked and served with, and I do not know of anyone who has greater intellectual curiosity and desire to get to the right answer. It was an honor to serve with him. He will be an outstanding director at the FDIC, if confirmed. I hope that is the case.

It is a privilege to be here. Thank you for this time. I know I do not have to leave but I cannot stay here, so thank you. Thank you so much.

[Laughter.]

Chairman BROWN. Well said. Thank you, Bob, for being here and for the generous introduction of your friend.

Would the four nominees come forward and please stand and I will administer the oath.

Please raise your right hands.

Do you swear or affirm the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GRUENBERG. I do.

Mr. HILL. I do.

Mr. McKernan. I do.

Ms. McClain. I do.

Chairman BROWN. Do you agree to testify before any duly constituted committee of the Senate?

Mr. GRUENBERG. I do.

Mr. HILL. I do.

Mr. McKernan. I do.

Ms. McClain. I do.

Chairman BROWN. Thank you. Please be seated.

We will begin with Mr. Gruenberg. Any of the four of you, if you want to introduce family members or friends with you today, please do that at the beginning of your testimony.

Mr. Gruenberg, please begin.

**STATEMENT OF MARTIN GRUENBERG, OF MARYLAND, TO BE  
A MEMBER AND CHAIRPERSON OF THE BOARD OF DIRECTORS  
OF THE FEDERAL DEPOSIT INSURANCE  
CORPORATION**

Mr. GRUENBERG. Thank you very much, Chairman Brown, Ranking Member Toomey, Members of the Committee. It is my honor to appear before you as the President's nominee to serve as Chairman and Member of the Board of the Federal Deposit Insurance Corporation. I would like to thank President Biden for the honor of this nomination, and Chairman Brown and Ranking Member Toomey for scheduling this confirmation hearing. I would also like to thank Senator Van Hollen for his very kind introduction.

I have had the privilege of serving as a member of the FDIC board since August 2005, and as Vice Chairman, Chairman, and Acting Chairman during that period. I served as Vice Chairman during the global financial crisis of 2008 and its immediate aftermath, and as Acting Chairman and Chairman during the post-crisis recovery period.

Prior to joining the FDIC, I worked for Senator

Sarbanes on the staff of the Senate Committee on Banking, Housing, and Urban Affairs from January 1987 to August 2005. During that period, I had the opportunity to work on major legislation including FIRREA, FDICIA, the Riegle-Neal Interstate Banking Act, the Gramm-Leach-Bliley Act, and the Sarbanes-Oxley Act.

A reasonable question to ask is why, after serving on the FDIC board for such a long period, I would seek nomination to serve as Chairman again?

The answer is pretty straightforward. My parents, who were Holocaust survivors from Poland, gave me the gift of being born in this country. Public service is a calling that has always been most meaningful to me. The FDIC is a great agency of our Government, whose mission of maintaining public confidence and stability in our financial system is critical to our country's well-being. The opportunity to serve on the FDIC board and to provide leadership as Chairman has been the greatest honor of my career, and I can think of no opportunity that would have greater meaning to me than the chance to continue to serve.

As I indicated in testimony before this Committee 2 weeks ago, the banking industry enters the current period of economic uncertainty in a position of significant strength. The industry is experiencing strong loan growth and continued good asset quality measures, and remains well-capitalized and highly liquid. However, it continues to face significant downside risks, from inflation, rising market interest rates, and geopolitical uncertainty. Taken together, these risks may reduce profitability, weaken credit quality and capital, and limit loan growth in coming quarters. These will be matters of ongoing supervisory attention by the FDIC for the near term.

In my testimony I also outlined key priorities for the FDIC for the remainder of this year and next, including maintaining a strong Deposit Insurance Fund, strengthening the Community Reinvestment Act, addressing the financial risks of climate change, reviewing the bank merger process, evaluating the risks of crypto assets to the banking system, and finalizing the Basel III capital rules.

In addition, I highlighted the FDIC's efforts to support minority depository institutions and community development financial institutions, promote a diverse and inclusive workplace at the FDIC, and strengthen cybersecurity and information security within the banking industry. If I may, I would like to conclude my statement with two acknowledgements.

First, the last time I appeared before this Committee for a confirmation hearing I had the honor of being introduced by Senator Sarbanes. Most of what I know about public service I learned from him and from serving on the staff of this Committee. His integrity, intelligence, and judgment were such that not a day that goes by that I do not ask myself, "What would Senator Sarbanes do?"

Finally, I would like to acknowledge the dedication and extraordinary capabilities of the employees of the FDIC who have performed with such distinction during my tenure at the agency, especially during times of crisis. They are deeply committed to the FDIC's mission and serve our country well every day.

That concludes my statement, and I would be glad to respond to your questions.

Chairman BROWN. Thank you, Mr. Gruenberg, especially your comments about the staff, who does not get nearly the credit they should from this institution.

Mr. Hill, welcome. Please proceed. Thank you.

**STATEMENT OF TRAVIS HILL, OF MARYLAND, TO BE A MEMBER AND VICE CHAIRPERSON OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION**

Mr. HILL. Thank you Chairman Brown, Ranking Member Toomey, and Members of the Committee. It is an honor to have been nominated by the President to serve as a member of the Board of Directors at the Federal Deposit Insurance Corporation, and to appear before you today.

Joining me this morning are my wife Lauren and my son Wesley, while my daughter Whitney is having more fun at daycare. I am continually grateful for all their love and support. I am also joined by my parents, John and Nicole, who have traveled here from New York, and from whom I have learned the importance of hard work, responsibility, and too many life lessons to list.

Public service is something I do not take lightly. All four of my grandparents arrived in this country as immigrants, including two who were German Jews escaping the Nazis. Both of my grandfathers subsequently volunteered to fight in World War II, and in the ensuing years one of them rose to manage a chain of restaurants despite never having attended high school, while the other started a company importing minerals from India. I grew up with a deep appreciation for all this country has to offer.

I spent 5½ years working as a staff member for this Committee. I am extremely grateful to Senators Crapo and Shelby for the opportunity. During my time on the Committee, I worked on a number of bipartisan bills, including the Economic Growth, Regulatory Relief, and Consumer Protection Act, commonly referred to as S. 2155, which was signed into law in May 2018. I spent countless hours working with staff members on both sides of the aisle. Through my experience on the Committee, I developed a deep understanding of the ins and outs of banking laws and regulations, the importance of bipartisan cooperation, and the vital oversight role Congress plays in holding Government agencies accountable to the American people.

After leaving Capitol Hill, I worked at the FDIC as an advisor to Chairman Jelena McWilliams and as her deputy for policy. In this role, I was involved in a range of FDIC policymaking initiatives, represented the agency in a number of different venues, and helped lead the agency through the COVID-19 pandemic. This experience reinforced my appreciation of the important role the FDIC plays in promoting the safety and soundness of banks and the stability of the banking system, while ensuring that hardworking Americans have a safe, accessible place to leave their savings. I also saw firsthand the exceptional expertise and experience of the FDIC staff. I remember my time at the FDIC with great fondness, and am excited about the potential opportunity to return, if confirmed.

Throughout my career I have seen the importance of a well-tailored regulatory framework that promotes economic growth, innovation, and broad access to credit, while ensuring our Nation's banks remain safe, sound, and resilient to shocks. I have also grown to deeply appreciate the value of a banking sector with institutions of all different sizes and business models, including commu-

nity banks and minority depository institutions that play a crucial role in their communities.

If confirmed, I look forward to working with Members of this Committee to ensure the FDIC continues to fulfill its critical mission, as it has done for the past 89 years.

Thank you, and I look forward to your questions.

Chairman BROWN. Thank you, Mr. Hill.

Mr. McKernan, welcome.

**STATEMENT OF JONATHAN MCKERNAN, OF TENNESSEE, TO  
BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FED-  
ERAL DEPOSIT INSURANCE CORPORATION**

Mr. MCKERNAN. Chairman Brown, Ranking Member Toomey, and Members of this Committee, it is an honor to appear before you today. I am humbled to have been nominated to be a member of the Board of Directors of the Federal Deposit Insurance Corporation. I am grateful to the President for entrusting me with this nomination, to Senator Corker for giving me my first job as a Senate staffer, and to Ranking Member Toomey for giving me another opportunity to continue public service here in the Senate.

My wife, Sapna Sharma, is here with me today. She and I met on the Hill when we were both starting out as congressional staffers. Despite serving on different sides of the aisle, Sapna and I quickly found common ground in our shared passion for the ideals that make this country great. Five years later, we have two boys, 20-month-old Patrick, and 4-month-old Jonathan, and I hope that together we will instill in our children a love of country and public service, while also teaching them to find common ground with others who have different world views.

My parents, Patrick and Victoria, are here today from East Tennessee. My father is a former Navy pilot and sales representative. My mother is a retired schoolteacher and homemaker. From my parents I learned the importance of hard work and perseverance, as well as an attachment to reading and learning, that together have provided a solid foundation for life. My brother, Paul, and his wife Kensie are here today as well. Both are also former Senate staffers, having met while working for Senator Alexander. My brother, Jason, and sister, Christine, also are with us virtually.

I believe my 15 years in financial services law, regulation, and policy have prepared me well to support the FDIC in its work to maintain stability and public confidence in the Nation's financial system. My first role in Government was as an advisor to Senator Corker on banking matters, including this Committee's bipartisan S. 2155 reform legislation and the Senator's efforts to negotiate bipartisan housing finance reform legislation. I then served as an advisor at the Department of the Treasury and the Federal Housing Finance Agency, and am now on detail from FHFA to this Committee. I have immensely valued my time here and believe this Committee represents the best of those in public service.

Before joining Senator Corker's staff, I worked for more than 9 years as a banking lawyer. My time in private practice began just as the 2008 financial crisis was beginning. We all watched as hundreds of billions of taxpayer dollars were spent bailing out "too big to fail" financial institutions, millions of homeowners were wiped

out by foreclosures, and almost every American family suffered in some way through the economic fallout that followed. The aftershocks of the crisis still reverberate 15 years later. Many American families will never recover the lost generational wealth. Many others remain convinced the system is rigged against them.

That experience left me with an enduring conviction that we as a society must have a strong financial regulatory system that ensures we do not repeat the mistakes of the past. The FDIC's mission, therefore, resonates deeply with me, and if confirmed, I would be strongly committed to ensuring the FDIC does its part to maintain a resilient financial system.

I thank you for your consideration and look forward to your questions.

Chairman BROWN. Thank you, McKernan.

Dr. McClain, welcome.

**STATEMENT OF KIMBERLY ANN MCCLAIN, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT**

Mr. MCCLAIN. Chairman Brown, Ranking Member Toomey, and Members of the Committee, joining me today is Ambassador Cindy Courville. I thank her for her presence. Joining me virtually are my mother, Ms. Laurie Freeman, my husband, Stephen McClain, and our four children—Stephen II, Kenya, Darrien, and Patrick, who is hopefully enjoying school and not watching television.

Thank you once again for the opportunity to appear before you today. I would first like to thank President Biden for nominating me to serve as Assistant Secretary for Congressional and Intergovernmental Relations at the U.S. Department of Housing and Urban Development. I would also like to thank Secretary Fudge for her support of my nomination. Thank you also to this Committee for holding today's hearing and meeting with me over the past few weeks.

I look forward to working with this Committee on our Nation's housing issues.

If confirmed, you have my pledge that I will bring to bear the same commitment to service and nonpartisanship that has guided my 30-year career in the United States military, private, and public sectors.

For the last 22 months, I have been blessed to serve my fellow veterans, their caregivers, and their survivors as Deputy Assistant Secretary for Congressional and Legislative Affairs at the U.S. Department of Veterans Affairs. I am proud to support VA's work on access to benefits and care for all veterans and their families.

I bring to this role a deep knowledge of Government and understand how to work across large organizations, agencies, and Congress to tackle challenges and deliver results. My leadership experience has provided me with the unique background to serve in this role. But just as important, I have seen firsthand the positive impact of access to affordable housing and economic mobility on people's lives.

You see, my childhood was filled with fond memories of going to my paternal grandmother's home on weekends. When my Grandma Freeman could no longer live in her home due to health issues she

moved into a subsidized neighborhood in Rockford, Illinois, called “The Terrace.” That same neighborhood became home to my maternal grandmother after the death of my grandfather, from cancer. My Grandma Williams transitioned from being a lifelong stay-at-home mother to a high school and college graduate, and ultimately a librarian. The Terrace provided my grandmothers with a sense of dignity and independence in the midst of major life changes.

Life happens to all of us, and as life is happening, nobody should have to wonder where they will lay their head down at night. I am keenly aware of the struggles that homeowners and renters are facing today. I am committed to working with Congress and the constituents it serves. If confirmed, I will do everything within my power to ensure that those who are most in need have an advocate and a voice at HUD.

The Office of Congressional and Intergovernmental Relations serves as an important force multiplier for HUD and a critical conduit for communicating HUD’s initiatives, programs, and priorities to Congress, State and local elected officials, Tribal leaders, and the Senate and House Committees with jurisdiction over HUD.

To successfully accomplish HUD’s missions, if confirmed, I will focus on three areas: first, ensuring that the Office of Congressional and Intergovernmental Relations is empowered and equipped to be agile and responsive; second, increasing the capacity and continuity of the Office’s workforce to deliver exceptional customer service; and finally, developing strong, trusted relationships through consistent communication and engagement.

I am ready to take on the HUD mission and work alongside HUD teammates in service to our Nation. If confirmed, I will lead as I did during my career in public service and as an Air Force officer—Integrity First, Service Before Self, and Excellence in All I Do.

Chairman Brown, Ranking Member Toomey, and Members of the Committee, thank you once again for the privilege to appear before you and the opportunity to serve my country. I look forward to answering your questions.

Chairman BROWN. Thank you, Dr. McClain, and Dr. McClain, thank you for your work for Ohio veterans on the PACT Act and on other issues you have worked on at the VA. You will be joining, I hope, once confirmation is done, you will be working with a friend of mine, a notable Ohioan, Secretary Fudge, so thank you for joining us.

Mr. Hill, I will start with you. Is there public purpose to crypto right now?

Mr. HILL. Senator, I think right now most of the public promise of crypto is for the future. Most engagement with crypto today has been speculative investments in nature. But I do think that there are a number of crypto projects that are intended to try to make aspects of our financial system more efficient, but I think as of today most of that is theoretical and not part of everyday life.

Chairman BROWN. Thank you, and I appreciate your consistency from our discussion yesterday and your answer today. We simply—and I know you mostly subscribe to what I am about to say—we cannot let thousands of risky and volatile assets that are used only for speculation and sanctions evasion into our banking system. And

we know that it is a national security issue when you look at what is happening with sanctions. So thank you for that response.

Mr. McKernan, this Committee, for too long, was just referred to in these halls and by many as the Senate Banking Committee, because it was mostly about Wall Street. You have spent much of your career representing big banks, siding with Wall Street. Now your job, should you be confirmed, will be that of a regulator. Regulators, as you know and as you have publicly said, serve the American people.

If confirmed, convince me your actions at FDIC will reflect that commitment to serve all people and communities, not just Wall Street.

Mr. MCKERNAN. Senator, if confirmed, I will, of course, be committed to ensuring the—doing my part that the FDIC performs its mission. That is all about stability and confidence in the Nation's financial system. If the FDIC cannot do that, then it is Main Street that is primarily going to bear the burden of that. Wall Street is going to be fine at the end of the day if we have another bailout, or another financial crisis. At the end of the day I am going to stay focused on the mission, making sure we do not ever have a repeat of the financial crisis.

Chairman BROWN. Thank you for that answer.

Mr. Hill and Mr. McKernan together, both of you said you want to work with Chair Gruenberg on the final Basel III capital rules. Former Vice Chair of Supervision Quarles said these rules should be implemented without increasing capital requirements, while Fed Vice Chair for Supervision Barr is committed to taking a fresh look at enhanced regulatory capital requirements.

So as brief of an answer as possible, yes or no, Mr. Hill and Mr. McKernan, do you agree with Vice Chair Barr?

Mr. HILL. Senator, without wanting to prejudge, I certainly would go into the position, if confirmed, with an open mind, and I do not think there is any down side to doing a holistic review of the current capital standards.

Chairman BROWN. Thank you. Mr. McKernan.

Mr. MCKERNAN. Chairman, I similarly support a holistic review.

Chairman BROWN. OK. Thank you both.

Mr. Gruenberg, you have served at FDIC in different capacities under administrations of both parties. Your record is bipartisan. Talk about, just walk through if you would, in the last minute and a half or so of my time, how you have worked collaboratively with Republican independent board members to achieve the FDIC mission.

Mr. GRUENBERG. Well, thank you, Mr. Chairman. First of all, I learned some lessons working for this Committee, for Senator Sarbanes, on the importance of working on a bipartisan basis to move forward the public interest, and I try to bring that experience to the FDIC.

As you know, I served as Vice Chairman under Chairman Sheila Bair during the global financial crisis, and we worked, if I may say, hand in hand through an extraordinary period to try to deal with the genuine risks of financial collapse in the United States. And after I succeeded Sheila as Acting Chairman and then Chairman, I worked on a daily basis with all of the members of our board to

try to bring the board together on the issues that the agency was responsible for dealing with.

I would note that during the time I was Chairman—we went back and checked the record on this—there were 773 board votes taken. Of those 773 votes, there were 7 dissents. The rest were unanimous, and of those 7 dissents they were all by 4–1 votes, which means that even on those votes they were bipartisan given the composition of our board.

So I think the agency functions best when you can bring the board together. I am deeply committed to working with all the members of our board, hopefully to reach agreement and even if we do not, to agree to disagree and be able to continue to work together.

Chairman BROWN. Thank you. My high school math would say that is greater than 99 percent of the votes. Thank you. Senator Toomey.

Senator TOOMEY. Thank you, Mr. Chairman. Mr. Gruenberg, when you spoke with my staff last week you expressed support for providing other FDIC board members with the resources necessary for them to hire staff, including staff from outside the FDIC. In fact, you noted that in your previous tenure as Chairman you had allowed an FDIC board member to hire a non-FDIC employee to advise him, and you remarked that this arrangement was positive, both for the member and for the board as a whole.

So if you are confirmed, will you commit to providing all other FDIC board members with similar resources and hiring flexibility?

Mr. GRUENBERG. Yes. Yes, Senator.

Senator TOOMEY. I appreciate that because I know you recognize the importance that staff play in the decision-making process, so I appreciate that commitment.

It is my understanding that the FDIC has an internal policy that requires that meeting materials be circulated to FDIC board members at least 2 weeks prior to the board meetings. Now I understand that has not always been observed in practice but that is the policy. Can you commit to abiding by this deadline, including on interagency matters, to make sure that all board members have the opportunity to review relevant material before board consideration?

Mr. GRUENBERG. Senator, I will certainly commit to doing our best on that. We generally meet that deadline. If we do not, we consult with the other members of the board, and frankly, if there is ever an issue with a board member feeling they have not had sufficient time to consider a matter then we would, if necessary, delay action on it until all the members of the board feel comfortable that they have had a full opportunity to consider the matters that the board has to act upon.

Senator TOOMEY. Well, I appreciate that and I hope you will be able to stick to that because it becomes—as you know, it can be impossible to properly evaluate and cast the decision about an important matter. The things you deal with are so complex and have so many nuances that it just requires that time for preparation.

Still with Mr. Gruenberg, now your involvement in forcing out former FDIC Chair McWilliams was very disturbing to me, as you know. I have talked to you about this. Are you aware of a single previous instance in the FDIC's nearly 90-year history in which

non-chairman board members sought to take control of the agency's agenda?

Mr. GRUENBERG. We certainly have had instances when I was Chairman when other members of the board put forward proposals, and there have been instances in the past in which other members of the board have proposed cases at a board meeting. And it is common practice at board meetings, at the conclusion of board meetings, for the Chairman to ask the other members of the board if there are any other matters that members would like to raise. So—

Senator TOOMEY. Let me—go ahead.

Mr. GRUENBERG. So I think the general practice is to defer to the Chairman on setting the agenda, but every member of the board is obviously an independent member with the ability, and to a certain degree responsibility, to put forward proposals that they believe are in the public interest.

Senator TOOMEY. OK. But my actual question was, was there a time when the board members took control of the agenda against the will of the Chair, overruling, essentially, the will of the Chair? And we have done the research and we cannot find any such time. In fact, in 2018, the board consisted of you as Acting Chairman, and two Republicans, Joseph Otting and Mike Mulvaney. I am pretty sure there must have been occasions where those two Republicans disagreed with you on various matters. But again, there has never been an occasion where they took control of the agenda, overruled you, and pursued their own agenda.

So I am concerned that what you and some of your colleagues did really undermines the FDIC and could have lasting implications.

Let me move on quickly here to your announcement on the very first day as Acting Chairman at the FDIC, that the FDIC would join the so-called Network for the Greening of the Financial System. Now this group has an explicit mission to, and I quote, “mobilize mainstream finance to support the transition toward a sustainable economy,” end quote. In other words, their stated goal is to allocate capital in such a way as to accelerate a transition to a low-carbon economy.

Now you recently acknowledged that capital allocations decisions should be made by banks. So do you believe it would be appropriate for the FDIC to seek to play a role in determining the pace of the transition of our economy to a lower-carbon economy?

Mr. GRUENBERG. That is not our responsibility, Senator.

Senator TOOMEY. I am glad to hear that, but I want to remind you that that is exactly what the mission of the Network for the Greening of the Financial System is. So we have U.S. financial regulators acknowledge the indisputable fact that they do not have the authority to set climate policy but then they join an organization that is dedicated to doing exactly that. So I would suggest withdrawing from the group as a way to acknowledge the limited nature of the powers of the FDIC.

I have got very little time remaining but very quickly, Mr. Hill, this is, of course, a multimember, bipartisan board, if you are confirmed. Could you briefly talk about some of the bipartisan work that you have done in the past that prepares you for this role?

Mr. HILL. Sure. Thank you, Senator.

Senator TOOMEY. And then I would like to ask Mr. McKernan essentially the same question, if you can answer the same question.

Mr. HILL. When I was a staff member for the Senate Banking Committee I participated in the work on a number of bipartisan bills. When I first started working for the Committee we were working on the FDA Solvency Act, which was marked up and approved by the Committee, I believe, by a 23-1 vote. I then did a lot of work on the Johnson-Craping Housing Finance Reform legislation, which also was marked up by the Committee and passed by a bipartisan vote. And, of course, there was S. 2155, which also was signed into law with a bipartisan vote.

Mr. MCKERNAN. Senator, briefly, similarly, some work on S. 2155 when I was working for Senator Corker, and perhaps also of note, there was a lot of bipartisan effort, led by Senator Corker's office, on housing finance reform office. I think at some part we had, as part of our working group on this, staff from six Republican offices and six Democratic offices on this Committee. So I think there was a lot of creative problem solving there and learning how to work on a bipartisan basis.

Senator TOOMEY. Thank you, and I want to thank all of the witnesses for their public service and willingness to serve.

Thank you, Mr. Chairman.

Chairman BROWN. Thank you, Senator Toomey.

Senator Reed, of Rhode Island, is recognized.

Senator REED. Well, thank you very much, Mr. Chairman. First let me acknowledge Senator Corker, one of the most principled and decent colleagues that I have had the privilege to work with. And despite our party differences we always saw eye to eye, for obviously reasons.

I also want to thank Dr. McClain for her extraordinary service in the United States Air Force. Thank you very much.

And finally, I want to commend Wesley for his composure and patience, which is unusual around here.

Mr. Gruenberg, we have had the privilege of working together for many, many years, and we share in common a great admiration for Paul Sarbanes and public service, and you, I think, have tried to continue in that tradition. I commend you for that.

What we discovered during the pandemic is that our community banks were very much more effective in helping small business than the larger institutions, and much more vital to the communities than, again, the larger institutions. FDIC has the principal responsibility for these banks. Could you give comment on the state of community banking, the challenges it faces? Please.

Mr. GRUENBERG. Thank you, Senator. The FDIC, as you know, is the lead Federal supervisor for the majority of community banks in the United States. So not only the supervision but maintaining a strong community bank sector in the U.S. banking and financial systems we view as really central to the FDIC's mission. And community banks play role in our financial system that is really critical and not replaceable. They consistently punch above their weight in terms of their impact on our financial system as a whole.

Most obviously, community banks today as the FDIC defines them account for about 12 percent of all the banking assets in the United States. They also provide nearly 40 percent of all the small

loans to businesses and farms in the United States, and their ability to serve a small business and small farms, which are, as you know, very labor intensive in terms of providing financial services to, is really the core of the business model of the community bank, which the larger institutions really do not have a similar interest in serving. And we know the importance of small business and small farms to the economy. So the sustaining of viable community bank sector in the United States is really quite critical.

And to the other point you raised, community banks have continued to perform quite well in the period since the global financial crisis and during the pandemic, and played a particular and leading role in terms of implementing the PPP program, to get loans out to small businesses. So the basic business model of a community bank, which is careful relationship lending, funded by stable core deposits, focused on the local community that the bank understands well, has actually held up and proven to be quite competitive, and it remains critically important to the financial system, and is the central responsibility of the FDIC.

Senator REED. Thank you very much.

Mr. Hill and Mr. McKernan, I have been trying to expand the Military Lending Act, which caps interest to servicemembers at 36 percent, to all Americans. I think 36 percent, in this climate, is a rather generous interest rate. Would you be supportive of such a proposal, since I would assume most of the FDIC insured institutions charge much less interest rate than that? Mr. Hill, first.

Mr. HILL. Senator, I appreciate all the work that you have done in this area. I do think it is critically important that banks treat their customers fairly and that loans that banks make to consumers are loans that are affordable and that consumers can repay.

With respect to the interest rate cap, I think we always want to be careful in how we balance affordability with access to credit, but would be happy to consider taking a look at the legislation, and certainly if it was passed would implement it as required.

Senator REED. Mr. McKernan, please.

Mr. MCKERNAN. Yes, Senator. In my time working for Senator Corker I had a number of conversations with folks at the Pew Trust on some of the creative thinking in that area. And one thing I did take from that is that it is a complex issue. I understand what you are trying to get at there. It is an important issue. And I would be very eager, if confirmed, to work with you and your staff to provide technical assistance on your work there.

Senator REED. Thank you very much. And Dr. McClain, good luck. Thank you.

Chairman BROWN. Thanks, Senator Reed.

Senator Shelby, of Alabama, is recognized.

Senator SHELBY. Thank you, Mr. Chairman.

First of all, congratulations to all of you, and as we say, your willingness to serve in the public sector. A lot of you had experience there over the years. I am sure all of you are qualified, highly qualified.

I am here specifically to laud Travis Hill. He worked as a senior counsel on this Committee, as has been said, and he served us with honor and distinction. He is highly qualified. He is highly edu-

cated—Duke, Georgetown. He has a lot to offer, and I congratulate the President in nominating all of you, but especially Mr. Hill.

Mr. Gruenberg I have known a long time. I have worked with him on the Committee when I was Ranking, with Chairman Sarbanes, and when I was Chairman, and so forth, and we worked together in a bipartisan way on a lot of things. But I have to associate myself with some of the concerns that Senator Toomey has made, when went on at the FDIC that more than bothered a lot of us, because it was unprecedented, and so forth. And maybe, Marty, you have learned something there. I do not know. But those reservations are with some of us on some of the things that you were involved in there.

I know you are highly qualified, by experience off this Committee and as Chairman and Ranking over at the FDIC. But those are real concerns, something that you and others ought to be thinking about deeply before that ever happens again.

Other than that I congratulate all of you, wish you well, hope the Chairman will expedite these things where we can talk more about you and for you on the floor. Thank you very much.

Chairman BROWN. Thank you, Senator Shelby.

Senator Menendez is recognized, from New Jersey.

Senator MENENDEZ. Thank you, Mr. Chairman. Congratulations to all the nominees.

The collapse of several crypto asset platforms this year has highlighted the growing economic risks of unregulated digital assets. We have also seen the potential for contagion when these firms collapse under the weight of risky behavior, and bring down other firms with them. As an example, last week New Jersey-based crypto lender BlockFi filed for bankruptcy due to its exposure to FTX. If digital assets become further integrated with the traditional economy and financial system that contagion risk could be amplified.

So Mr. Hill and Mr. McKernan, if confirmed, how will you ensure that FDIC-supervised institutions are shielded from inappropriate risk in the digital asset space?

Mr. HILL. Senator, I guess I would start by saying I think it is important to distinguish between different types of crypto-related activities that banks can potentially get involved in. I think there is a big difference between a bank providing custody services for crypto-related activity versus a bank using its balance sheet to engage in speculative investments.

But I think generally the responsibility of the FDIC and the other banking agencies is to ensure that to the extent activities are legally permissible that they are done in a safe and sound way.

Senator MENENDEZ. Mr. McKernan.

Mr. MCKERNAN. Senator, if confirmed, the way I would approach crypto-related activities within the banking system is really three-fold. First, any crypto-related activities at an FDIC-regulated bank need to be performed in a safe and sound manner. Second, those activities need to be in compliance with consumer protection and other law. And third, the activities cannot pose a risk to financial stability.

I maybe might just amplify a bit the second point, compliance with law. I would want to study this issue further, if confirmed, but

as I understand it there are some significant open questions as to what is a permissible activity when it comes to crypto at a bank. So I think that is something I would want to understand better. And second, I do think there is a role for the market regulators to play in continuing to define the rules of the road in this space, and the banks will need to similarly comply with that law.

But at a high level it is about safety and soundness, compliance with law, and risk to financial stability.

Senator MENENDEZ. All right. In order to manage this risk it is important for Congress to have as much information as possible. In April, the FDIC issued a financial institution letter directing its supervisees to notify the FDIC of any activity they currently engage in, or intend to engage in, related to crypto assets.

Mr. Gruenberg, will you commit to keeping Congress up to date on the findings of your research and the integration of digital assets into the traditional financial system?

Mr. GRUENBERG. Yes, Senator.

Senator MENENDEZ. Thank you. I appreciate the caution FDIC has thus far shown with regard to digital assets, and I expect the nominees before us today to continue the scrutiny if you are confirmed.

Chair Gruenberg, Mr. Hill, and Mr. McKernan, the latest data from the FDIC shows that just 4 percent of the agency's executive managers are Hispanic, virtually the same number as the year before. Furthermore, the agency employs the lowest number of Hispanics relative to other regulators, such as the OCC and the NCUA, both in overall workforce and in senior positions. This is a community that has a \$1.8 trillion domestic marketplace impact. It needs to be represented in our financial institutions.

So why has the FDIC lagged behind its counterparts in hiring Hispanic and Latino staff and leadership?

Mr. GRUENBERG. Senator, you raised a very important point that has been a focus of attention and priority for us. As a general matter among minority employees, the FDIC has generally been at or above the civilian labor force, but that has not been the case for Hispanic employees. We have been significantly below, as you pointed out. And for us that has been a focus of attention in terms of our efforts to ensure diversity and inclusion at the FDIC.

Earlier this year we established, at the FDIC, an interdivisional task force focused on Hispanic employment, because it really is within our diversity issues that most significant challenge. And we are focusing, in particular, on recruitment and hiring as well as training and promotion at the agency. And I assure you this will be an ongoing priority, and we will be glad to stay in touch with you and your staff.

Senator MENENDEZ. Well, this is a priority for the Senator—it has been for some time—and, you know, the problem is we make no progress. So I hear all the things about, you know, we are going to recruit, we are going to do this, we are going to do that, but we make no progress. So I would like to ask the three nominees to the FDIC, are you committed to having a diverse workforce, and will you work to achieve it if you are confirmed?

Mr. GRUENBERG. Yes, Senator.

Mr. HILL. Yes, Senator.

Mr. MCKERNAN. Yes, Senator.

Senator MENENDEZ. And Mr. Chairman, with your indulgence, a very quick question, a provincial question, to Dr. McClain.

Under previous administrations HUD removed key multifamily housing staff from its office in Newark, transferred them to the New York regional office. HUD has not had a Region 2 administrator from New Jersey in over a quarter of a century. Now as a former mayor and a State legislator I know that presents a challenge for residents and property owners and managers. New York and New Jersey have very different housing needs and issues. So it is critical that we have HUD staff in the State that are familiar with our unique needs.

Will you ensure, if confirmed, that the Newark office has the staff it needs and New Jersey remains a priority at HUD?

Mr. MCCLAIN. Senator, thank you for the question. I understand that this has been an ongoing conversation between your staff and HUD, and it also came up in my conversation with your staff. If confirmed, I am committed to continuing to work with you and your staff on the issue surrounding New Jersey, and will make that a priority as we continue to move forward, sir.

Senator MENENDEZ. OK. Continuing the work is nice, but making a difference is nicer. I have said this to the Secretary, who I was very supportive of. If it continues that we do not have the appropriate staff in New Jersey then I will not support future HUD nominees, no matter how qualified they are. Thank you very much.

Chairman BROWN. Thank you, Senator Menendez.

Senator Tillis, of North Carolina, is recognized.

Senator TILLIS. Thank you, Mr. Chairman. Congratulations to all of you for your nominations. Mr. Hill, Mr. McKernan, and Dr. McClain, I look forward to supporting your nominations. I want to thank you for your service in the Air Force. And Mr. McKernan, I was glad to hear that you attended Duke. I am sad you did not have the grades to get into Chapel Hill. I always have to dig Duke.

Mr. Gruenberg, I did not take any pleasure in the comments that I made a couple of weeks ago on what I consider to be a serious problem with what occurred last year. And on April 7, 2017, when President Trump was calling on Senate Republicans to nuke the filibuster, I signed on to a letter specifically saying, with 61 other members, that we would not do that because it would destroy this institution. Four years later we had five signatories from this Committee who voted to try and nuke the filibuster. This sort of bipartisan framework that we work within is hard, but it is necessary.

The apolitical framework that has been the history of the FDIC, with 20 chairmen, 9 of those chairmen, including you, serving on a board that had a majority of the other party. I am sure they always did not agree on matters, but they always agreed on trying to maintain the apolitical nature of the FDIC. So this is an unprecedented action and one that concerns me.

I know you are seeking bipartisan support, but this is not about your credentials. I have spoken with a number of people and I agree with Senator Shelby that you have the experience and you have a lot of people who respect you for your technical expertise. This has to do with leadership decision that you consciously made

that gives me concern, particularly in these times where we are looking for ways to work together.

In a document on December 9th, you issued a request for public comment on the Bank Merger Act, in coordination with Mr. Chopra. This document, alleging to initiate rulemaking changes at the FDIC, was posted to the CFPB website against the wishes of, at that time, Chair McWilliams. I would assume since this document was posted publicly and your name was attached, you are knowledgeable about its origins and contents.

So my question to you is can you provide to me the names, positions, and the agency affiliations of the individuals who drafted the document?

Mr. GRUENBERG. I believe so, Senator.

Senator TILLIS. And can I get that as a follow-up or do you have any off the top of your head now, that you can share with us?

Mr. GRUENBERG. I would be glad to do it as a follow-up.

Senator TILLIS. OK. So you will commit to making any of the staff organizations, you will make it available to us prior to your confirmation.

Mr. GRUENBERG. Yes, sir.

Senator TILLIS. OK. I also assume when you considered precedent when determining whether to issue the document, you have been at the FDIC since 2005. Is that correct?

Mr. GRUENBERG. Yes, sir.

Senator TILLIS. So you are familiar with the FDIC regulatory history since then. During your tenure, can you identify for me other instances when another agency publicly posted FDIC policy updates against the wishes of the FDIC Chair?

Mr. GRUENBERG. No, Senator.

Senator TILLIS. OK.

Moving beyond your tenure, the FDIC's first board was sworn in on September 11, 1933. While the CFPB had yet to be established, the FDIC's other sister agency, the OCC, was on the FDIC board from its inception. Can you provide me with instances through the 89-year history when an alleged official action of the FDIC was posted onto the OCC website or into their public record against the objection of the FDIC Chair?

Mr. GRUENBERG. We will certainly check the record on that. I am not aware of any, but we will check the record.

Senator TILLIS. I think you are going to find that it is not—and again, as Senator Shelby indicated, I want to associate myself with comments made by Senator Toomey. But again, this comes down to leadership, and I feel like, in the same way that if we voted to nuke the filibuster here, you cannot unring that bell. So I have great concerns about how the FDIC is going to operate in the future. Thank you.

Chairman BROWN. Thank you, Senator Tillis.

Senator Tester, from Montana, is recognized.

Senator TESTER. Thank you, Mr. Chairman, and thank you all for being here at the hearing. Congratulations to all of you on your nomination, and thank you for your service, Marty. Travis and Jonathan, thank you for coming in to my hideaway and having a nice visit. I do not intend to ask you three any questions. I am going

to focus on Dr. McClain, if I might, so you guys can smoke if you have got them. OK?

Dr. McClain, you have impressive experience working in congressional relations in the public and private sector, including most recently for Department of Veterans Affairs and the Air Force. In addition to your 30-year career in congressional affairs you serve as an officer in the Air Force Reserve. Thank you for that.

It is very clear that you are more than qualified for the role for which you have been nominated. I especially appreciate your leadership as Deputy Assistant Secretary for Congressional and Legislative Affairs at VA. You and your team did a great job of handling the transition after the election and responding to an unprecedented number of inquiries from Congress about priorities such as the Sergeant First Class Heath Robinson Honoring our PACT Act that was just passed last summer.

Given your track record I have no doubt that you will do a great job at HUD and will work to ensure that Congress gets timely and accurate information, which is critical in the capacity you hopefully will be confirmed for. But if confirmed, can you tell me, in this job, what are going to be your top priorities?

Mr. MCCLAIN. Thank you, Senator Tester. One of the things that I have learned over the course of my last 30 years, regardless of whether it is in a congressional affairs organization or in an international affairs organization, is really focusing on, one, my staff, understanding, if confirmed, what the needs are of the congressional and intergovernmental relations team so that they are empowered to be able to go forth and do their job and that I am there as a resource for them. My second priority is ensuring that there is a consistent flow of information to and from not just Congress but also our State and local leaders. Because through that partnership that really allows us to be able, at HUD, again, if confirmed, to be able to understand what the constituent needs and address them, because through those needs that allows us to make more informed policy decisions.

And third, if confirmed, really understanding what the capacity needs are, not just from a physical perspective, growing the number of full-time equivalents, but really understanding what the additional physical needs are of the team. Because again, if people are empowered, they have the resources to be able to do their jobs, that allows us to be able to serve the American public.

Senator TESTER. Thank you for that answer. What lessons will you bring from your career in the Air Force?

Mr. MCCLAIN. Wow. I would say three things and then I will expand upon them—humble, credible, and approachable. Being humble enough to admit when you are wrong and when you make a mistake. It does not matter where you are at. Credible, taking the time that if you do not know something go learn it, whether it is from the person that is the correspondence clerk to the person who is your general counsel. Everyone has something to learn and something to give to all of us.

And last but not least, Senator, being approachable. Being approachable to me means having an open-door policy, to be willing to listen, whether it is something related directly to what is going on, the hot topic for that moment, or whether that it is something

that is important to that individual. We all spend most of our time at work, so having an environment where you have a leader that is humble enough to admit mistakes, credible enough to understand the issues and to be able to help guide and provide a north star, and approachable enough to be able to have conversations. That is what makes a great workforce to me.

Senator TESTER. I appreciate those answers and hopefully we will move you out of Committee quickly because I think you will be a tremendous asset to HUD, as you have been to the VA, so we thank you.

I do have 20 seconds left so I am just going to ask a really quick question. Crypto has come up a lot since the FTX issue, and I took it up with both Travis and Jonathan when they were in my office. I am going to phrase the question a little bit different because I do not think crypto passes the smell test. At least in my book it does not. And I do not want to give it credibility by regulation.

So if we put forth regulations on crypto how do you stop that from inherently just giving crypto credibility? Any of the three of you can answer that.

Mr. GRUENBERG. That is something we have really tried to be thought about, Senator, because I agree with you. From a prudential banking regulator perspective, our first responsibility is the safety and soundness of the institutions and the consumers that the institution serves. And so our approach has been to identify the activities, to understand them well, and the risks, and to make judgments in terms of the safety and soundness, consumer protection, BSA, AML, and even potentially financial stability to ensure we understand what we are doing before we allow the insured banking institutions to get engaged in the activity. And any approach to regulation, it seems to me, should start with that premise.

Senator TESTER. Any further comment to that, Mr. Hill or Mr. McKernan.

Mr. HILL. I would just agree that I think from the FDIC's perspective the focus is on the safety and soundness of the institutions that the FDIC oversees and ensuring that they are acting in compliance with all laws and regulations. I think there are broader questions related to crypto that Congress and perhaps other agencies might have on their agenda, but I think from the banking regulator's perspective it is really just about safety and soundness and the core risks to the banking system.

Senator TESTER. Jonathan?

Mr. MCKERNAN. I thought the chairman and Travis put it very well. I would just echo, amplify the importance that any activity, including any crypto activity, has to be done in a safe and sound manner.

Senator TESTER. Thanks. I look forward to supporting all four of you. Thank you.

Chairman BROWN. Thank you, Senator Tester.

Senator Lummis, from Wyoming, is recognized.

Senator LUMMIS. Thank you, Mr. Chairman.

As I look at these nominees to the FDIC board I am really scratching my head because for all the talk of diversity and inclusion that Members of this Committee have championed and that

the White House has championed, I am not seeing that kind of diversity that seems to dominate the thinking about nominees in front of us today.

Further, I am actually kind of angry that you, Mr. Gruenberg, forced the resignation of your predecessor as FDIC Chair, a first-generation American immigrant who was a woman. So my question is this. Are there any women currently nominated or serving on the FDIC board, Mr. Gruenberg?

Mr. GRUENBERG. No, Senator.

Senator LUMMIS. Do you feel your nomination advances diversity on the FDIC board?

Mr. GRUENBERG. Not in that sense, no, Senator.

Senator LUMMIS. But so many on this Committee think it is important to send the signal, and many qualified candidates have been passed over by this Administration for other roles because they are not sufficiently diverse. So why you?

Mr. GRUENBERG. Well, it is a little over my pay grade, Senator. All I can say is I have served at the FDIC, I believe deeply in its mission, I have tried to serve it well, and I think I have the capability to continue to provide leadership, and it is a very important agency.

Senator LUMMIS. Why did you force the FDIC chair out?

Mr. GRUENBERG. I would, if I may, Senator, the issue goes to the authority of the agency, and under the Federal Deposit Insurance Act the authority of the agency explicitly is vested in the board of directors, and a majority of the board has the authority to place items before the board—

Senator LUMMIS. But never had until this.

Mr. GRUENBERG. No. Actually, Senator, there—

Senator LUMMIS. On a chair? On a chair? You have forced out chairs? When there was a change of administration in the past, was the chair forced out? Ever, before this one? I would challenge the conclusion that this was not a unique situation.

I want to turn next to Dodd-Frank. 12 U.S.C. 1812(a)(1) requires that the FDIC board have one member with “State bank supervisory” experience. That is a quote. State bank supervisor to defined in that same statute as being an officer of a State with primary regulatory authority over State banks. So this is not merely a Federal regulator that oversees State banks.

So neither Mr. Hill nor Mr. McKernan have experience as a State bank regulator. Mr. Gruenberg, have you worked as a State bank regulator, for a State banking agency?

Mr. GRUENBERG. I have not worked for a State banking agency, Senator.

Senator LUMMIS. Have you ever written a report of examination or issued an exam rating to a community bank, the things that would give you a good understanding of how fair a bank’s exam rate is, for example?

Mr. GRUENBERG. Well, I would point out that the FDIC supervises, as you know, State-chartered institutions—

Senator LUMMIS. Have you ever written a report of examination?

Mr. GRUENBERG. No. I am not an examiner. I have just served on the board of the agency, Senator.

Senator LUMMIS. Do you think someone should have been nominated to the FDIC board with State bank supervisory experience? Because most banks in our dual banking system are State chartered.

Mr. GRUENBERG. They are the majority of the institutions. I understand why you asked the question, Senator, and that is also above my pay grade. It is a judgment for the White House in terms of the nomination.

Senator LUMMIS. Well, the statute requires someone who has actually served as a State bank regulator. That is not you or any other nominee here. So I think it is pretty clear that the White House and this Committee think it is OK to ignore the clear text of Dodd-Frank. And I do not think this Committee should move forward with these nominations until we start following the law.

Thank you, Mr. Chairman.

Chairman BROWN. Thank you, Senator Lummis.

Senator Cortez Masto, from Nevada, is recognized.

Senator CORTEZ MASTO. Thank you, Mr. Chairman. Congratulations. Welcome to all the nominees and all of the family members here today.

Dr. McClain, let me start with you. My office has worked closely with HUD staff to improve and reauthorize the largest affordable housing block grant program, called HOME. If you are confirmed to this position, will you commit to working closely with my office to improve the HOME program?

Mr. McCLAIN. Senator Cortez Masto, thank you very much for the question. If confirmed, I will commit to working with your staff.

Senator CORTEZ MASTO. Thank you. And this Congress has invested hundreds of billions of dollars to build really hundreds of thousands of affordable homes. Will you ensure that we receive State-level data about these investments?

Mr. McCLAIN. Senator, if confirmed, I will work with the appropriate administrative office and program office to ensure that your staff gets the data that it is looking for.

Senator CORTEZ MASTO. Thank you. And if you have not surmised by now, affordable housing is a key issue in the State of Nevada, and I want to make sure we are doing everything we can, at a Federal level, to support our State and local partners, and private partners, to make sure we are building that affordable housing. So thank you.

Let me turn to Mr. Hill and Mr. McKernan and our Acting Chair, Mr. Gruenberg. Mr. Hill, if confirmed to this position what will you do to expand on the good work of the FDIC through its BankOn collaborations and other approaches to ensure that banks provide affordable and accessible basic banking services to residents of their communities.

Mr. HILL. Thank you, Senator. I think financial inclusion is an important part of what the FDIC does. The FDIC, as you know, has done a lot of work with BankOn to promote low-cost deposit options for consumers. I believe that there are hundreds of banks that now offer BankOn products, and if confirmed, I would certainly plan to engage with other members of the board and the staff to learn more about what the FDIC is doing and what more can be done.

Senator CORTEZ MASTO. Thank you. And Mr. McKernan, if you are confirmed to the FDIC board, how will you ensure that changes to the Community Reinvestment Act preserve branch banking so that people can open and maintain bank accounts?

Mr. MCKERNAN. Senator, thank you. Let me just say, as someone from East Tennessee with maybe a little bit more experience of the unique aspects of living in rural America, the Community Reinvestment Act really resonates personally with me. It is critical that banks support all segments of their community, rural and otherwise.

And so I think, you know, while there is open rulemaking out there and I cannot prejudge the specifics, I commit to certainly working with the Chair and the staff to make sure that the implementing rule fully achieves that statutory mandate.

Senator CORTEZ MASTO. Thank you. And in many of our rural communities in Nevada there are a lot of indigenous people and Tribal lands. So how would you address the limited banking service for our Tribal communities as well? I am just curious.

Mr. MCKERNAN. Senator, I think the Community Reinvestment Act and implementing it will have a role to play there as well.

Senator CORTEZ MASTO. Thank you. I appreciate that.

Mr. Gruenberg, first of all let me just say thank you for your timely response to the letter that Senators Romney, Sinema, and myself sent regarding the industrial loan companies, which are important to Nevada's financial sector.

In your testimony before the House Financial Services Committee you spoke about the FDIC's work on contending with a range of risks to ensure resiliency in our banking system. Do you have anything to add regarding risks to the financial sector posed by other nonbank sectors, or other issues?

Mr. GRUENBERG. I think it is a key risk factor for the agency to focus on. Bank relationships with nonbank third parties and bank financial companies really is a significant source of risk to our insured depository institutions, and our supervision of those relationships and ensuring that the bank understands that when it engages and partners with a third party, in effect, if that third party is providing services on behalf of the bank, from a supervisory standpoint it is as if the bank itself is directly providing those services and the bank is accountable for the provision of those services. So the bank really has to manage the relationship in a way that it ensures compliance with its basic supervisory responsibilities.

Senator CORTEZ MASTO. Thank you. And then just touching on a separate topic, can you just elaborate for me, I have heard a lot of concerns from my Republican colleagues. But can you elaborate for me? Apparently there was a DOJ slip opinion that was responding to a question regarding whether the Chairperson of the FDIC has the authority to prevent a majority of the FDIC board from presenting items to the board for a vote and decision. Can you talk about how that came about?

Mr. GRUENBERG. Yes. It was requested by the general counsel of the FDIC in order to get clarity around that issue, Senator.

Senator CORTEZ MASTO. And the clarity is, from my understanding of this opinion, that really the Chair cannot prevent the

other board members, if they so choose as a majority, to present items before the board. Is that correct?

Mr. GRUENBERG. That is correct, Senator.

Senator CORTEZ MASTO. Thank you. Thank you again to all of the nominees. Congratulations.

Chairman BROWN. Thank you, Senator Cortez Masto.

Senator Hagerty, of Tennessee, is recognized.

Senator HAGERTY. Thank you, Chairman Brown and Ranking Member Toomey. It is good to be back with you after Thanksgiving.

I wanted to start just by recognizing one of the nominees here today, Jonathan McKernan, a fellow Tennessean, someone who has wonderful credentials, both in the practice of private law and working in the public sector. Mr. McKernan, I am delighted to see you here representing Tennessee so well. Congratulations on your nomination to this important position.

I would like to turn my question to Mr. Gruenberg. Mr. Gruenberg, on April 7th, the FDIC sent a financial institution letter to all FDIC-supervised entities, requiring them to notify your agency of their crypto-related activities. So my first question for you is if you can walk me through the process that FDIC-supervised institutions have to undergo to accomplish this.

Mr. GRUENBERG. Thank you for the question, Senator. We were trying to, as a starting point, to understand the engagement of our insured institutions with crypto-related activities. It does not require an application. So as a starting point for us we wanted to find out which of our insured institutions that we supervise are either engaging in crypto-related activities or considering it.

Senator HAGERTY. What form does the notification take then?

Mr. GRUENBERG. So we issued a financial institution letter, making the request of the institutions the FDIC supervises, that if they engage in crypto-related activities or planning to, to notify us. And they can notify us in a letter, they can call our regional office. And if they are engaging or planning to do so we ask them to provide, in some detail, the nature of the activity so that we can evaluate it from a standpoint of safety and soundness, consumer protection, BSA and AML compliance, and then provide supervisory feedback to the institution.

It was a way for us to do a couple of things. One, see which of our institutions were engaging and planning to engage, and if they were, to try to understand, with some detail, what they were doing. Because these are generally new activities, both for the institution, and frankly, for us as a regulator to understand.

Senator HAGERTY. The technology has great promise. Institutions in my home State of Tennessee are engaging in this right now. As a person who has invested in and been an executive in small businesses, I can tell you that the technology poses great potential, and I am concerned about any activity that might chill it.

You and your agency continue to cite financial stability and consumer protection as the motivation behind these sorts of policies. You are establishing a precedent that requires businesses to notify their supervising regulators of involvement in sectors that you have deemed high risk. Is that correct? Is that how you have justified this, as a high?

Mr. GRUENBERG. I mean, this financial institution letter was specific to crypto-related activities, and yes, I think in our financial institution letter we identified, as background, the risks we saw from a safety and soundness, potential from a safety and soundness standpoint, consumer protection, BSA, AML, financial stability.

Senator HAGERTY. I think you can understand my concern. whether it Operation Choke Point, whether it is the creation of new merchant category codes for firearm and ammunition purchases, whether it is the debanking of the oil and gas industry, our financial system is increasingly becoming politicized. It is becoming weaponized to achieve partisan aims that certainly would not survive a vote here in the Senate.

I am concerned that this letter that you put forward may certainly be the FDIC simply testing the waters to see how other industries like this Administration might be affected, other industries that the Administration may be ideologically opposed to.

So my next question, Mr. Gruenberg, is whether there are any other specific sectors of our economy that FDIC-insured entities that are going to be required to disclose their involvement in, and if not—well, let me ask you that first. Are there any other sectors that you have got targeted, that you are going to send a similar letter to, to get them to disclose their involvement?

Mr. GRUENBERG. No, Senator.

Senator HAGERTY. Well, that is good to hear. Then I would like to know if you can commit to me here today that the FDIC will not institute similar practices, for the oil and gas industry, for example, for the firearms and ammunition industry, or any other politically sensitive industry that might become a target of this Administration?

Mr. GRUENBERG. I agree with that, Senator.

Senator HAGERTY. OK. I am glad to hear that. Thank you. Thank you, Mr. Chairman.

Chairman BROWN. Thank you, Senator Hagerty.

Senator Van Hollen is recognized.

Senator VAN HOLLEN. Thank you, Mr. Chairman, and congratulations to all of you on your nominations. I think we have three Marylanders and one from Tennessee. Congratulations all.

Let me start with you, Mr. Gruenberg, and just first of all follow up briefly because you and I have had conversations about the FDIC's role within its domain to assure that we have prudent banking practices, including looking at the risk of crypto. So I would say in light of recent developments in the meltdown of FTX, your inquiry from members of the FDIC, which of course, are federally insured depository institutions, is a worthwhile and necessary endeavor. So I appreciate you taking that precaution, just to get a sense of what is out there.

Just to follow up on the CRA question, and I think that was raised in response to Senator Cortez Masto's questions. Where are we on the timeline with respect to the new CRA rulemaking?

Mr. GRUENBERG. As you know, Senator, we issued a notice of proposed rulemaking in May. It had a 90-day comment period, which closed on August 5th, I believe. We got quite a few comment letters, over 1,000. The staff have been working through them, and we are in the process of developing a final rulemaking.

I can tell you it is the top priority of the FDIC to complete this rulemaking, and I think our goal is to get it done as soon as we can, if I had to guess, the early part of next year. But it is also an ambitious rulemaking. Believe me, we are very much focused on getting it done.

Senator VAN HOLLEN. I appreciate that. If you were to identify, say, three top priorities, and I know there are lots of pieces to it, but what would the three be? And also I have this question. Our latest look showed that about 50 percent of uninsured personal lending comes from online operations that are not subject to FDIC overview, and of course, therefore, not subject to CRA. And as more and more of lending goes offline, I assume you agree that we would also hope that those lenders would not discriminate based on who they are lending to.

So first, if you could just identify some of the core, key pieces of the current CRA proposal but also how we should think about addressing all the pieces that are outside that jurisdiction.

Mr. GRUENBERG. That is a large question, Senator. I think from the standpoint of the CRA proposed rulemaking, which is an ambitious proposal, I think the core provision is dealing with the fact that currently CRA is limited to the branch network of banks, and the so-called assessment areas, which are evaluated for CRA, are tied to their physical branch network. And as we know, and you pointed out, an increasing portion of lending by banks is not tied to their branches but may be done on an online basis, and they could involve significant lending in communities where they may not have a physical presence.

So in some sense the key challenge for the rulemaking was to deal with this evolution in the banking industry, which I think is only going to proceed further down this line, and in a sense the core proposal in the rulemaking is to identify new, what we call retail lending assessment areas, where a bank may be having significant lending activity but does not have a physical branch. And we have metrics to identify that if certain thresholds are met—

Senator VAN HOLLEN. So, Mr. Gruenberg, my time is running short.

Mr. GRUENBERG. Yes. Sorry.

Senator VAN HOLLEN. So you are making the point why we have to update the CRA. It also raises that broader question I had about everybody who is not under the jurisdiction.

Mr. GRUENBERG. I think if we are talking about lending by nonbank financial institutions it is outside of our authority, and at the end of the day to extend some community investment obligation would be a matter for Congress to consider.

Senator VAN HOLLEN. Right. I mean, it does, obviously, create responsibilities for FDIC-insured institutions that are not applied to others, which some may argue would actually incentivize more people to go online and outside that jurisdiction.

I thank all of you for testifying. I look forward to supporting all your nominations. And Dr. McClain I had hoped to get a couple of questions to you but I will follow up. I look forward to working with you on the housing issues. I also serve on the Appropriations Subcommittee that oversees HUD, so I look forward to working with you on some priorities there.

Chairman BROWN. Thank you, Senator Van Hollen.  
Senator Daines, of Montana, is recognized.

Senator DAINES. Chairman, thank you.

Mr. Gruenberg, on December 9, 2021, you and Director Chopra issued a joint statement that the FDIC voted in favor of a request for information and comment on the bank merger process. This vote never happened. Instead, these actions began the process of upending an 88-year tradition of the FDIC board working collaboratively with its Chairman, and allowing that Chairman to set the agency's agenda. Accordingly, then Chair McWilliams resigned, and you became the FDIC's Acting Director. In a letter to President Biden just last year, my Republican colleagues and I detailed our concerns about the consequences of these actions.

I simply want to start this morning by stating that I think 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.

I wanted to state that, and now I want to turn to my questions. Mr. Gruenberg, Operation Choke Point was implemented under your leadership of the FDIC. Federal regulators at the FDIC and DOJ used their authorities to intimidate banks into shunning lawful but politically disfavored industries, including firearms and ammunition dealers. You are now being nominated to the same position. My question is, will you commit here today, in front of this Committee, that you will actively prevent your employees at the FDIC from criticizing, discouraging, or prohibiting banks from lending or doing business with any industries or customers that are operating in accordance with the law?

Mr. GRUENBERG. Yes, Senator, and that has been the policy of the FDIC.

Senator DAINES. Thank you.

Dr. McClain, you spent nearly 2 years as Deputy Assistant Secretary for VA's Office of Congressional and Legislative Affairs, working to fulfill Secretary McDonough's promise to provide Congress with quick responses and accurate information. So I have got two questions for you this morning.

First, for Dr. McClain, do you agree with Secretary McDonough's belief that, quote, "The lifeblood of any well-functioning organization is accurate and timely data"?

Mr. MCCLAIN. Senator, I agree that it is critical to be able to provide that information in an accurate and timely manner, and if not, to be able to communicate when that information would be available.

Senator DAINES. Second, what have you learned from your leadership experience at the VA that you would be applying at HUD, if confirmed?

Mr. MCCLAIN. Senator, one of the things that I have learned in my nearly 2 years at VA is truly the depth and breadth of benefits and care that the Department of Veteran Affairs provides to veterans, their families, their caregivers. But even more importantly, the necessity for really not just getting the information from our constituents, which I have been blessed to be able to work with a number of offices directly in taking care of constituent issues, but being able to take that information and bring it back to the broader

VA enterprise to be able to inform some of the decisions that we make. That is invaluable, and if confirmed, you can expect that I will continue to work not just with the Members of this Committee but members and staff across, to be able to really understand what is going on locally there, within your States, and with your constituents, so that we can better serve the American public.

Senator DAINES. Dr. McClain, thank you. Mr. Chairman.

Chairman BROWN. Thank you, Senator Daines.

Senator Warren, of Massachusetts, is recognized.

Senator WARREN. Thank you, Mr. Chairman, and congratulations to our nominees.

So I just want to take a minute to respond to the baseless attacks against Acting Chairman Gruenberg. My Republican colleagues continue to accuse him of wrongdoing after the previous FDIC Chair, Jelena McWilliams, tried to block a vote to get public feedback on bank merger rules last year. McWilliams simply announced that she was blocking the request of the board majority without citing any legal basis whatsoever. And when she was asked to produce a legal basis, she resigned.

Now that seems clear enough that McWilliams was in the wrong, but for those who insist on relitigating the issue it turns out that the Department of Justice's Office of Legal Counsel released a legal opinion on it in July of this year.

Mr. Hill, you worked for the previous FDIC Chair, Ms. McWilliams, so let me ask you. In its July memo, did the Office of Legal Counsel determine that a majority of the FDIC board had the authority to bring items before the board for a vote?

Mr. HILL. I believe that was the opinion of the Department of Justice in that memo.

Senator WARREN. Thank you. That is exactly what the OLC opinion states. In fact, it says, quote, "The Chairperson of the Federal Deposit Insurance Corporation does not have the authority to prevent a majority of the FDIC board from presenting items to the board for a vote and decision," end quote, and that is exactly what Ms. McWilliams tried to do. In other words, the former FDIC Chair broke the law when she blocked a vote to help hold big banks accountable, and she got caught, and she resigned.

So Mr. Chairman, I would like to enter into the record the OLC opinion that makes it clear that Acting Chairman Gruenberg and the other current FDIC board members were following the law, while the previous Republican FDIC Chair unlawfully exceeded her authority.

Chairman BROWN. Without objection, so ordered.

Senator WARREN. Thank you.

Now that we have that cleared up let me turn to another issue, and that is crypto. The implosion of crypto platform FTX revealed that one of the industry's major players was not much more than a handful of magic beans. And now thousands of mom-and-pop investors have lost their savings, and many more are being squeezed by the contagion that FTX's collapse has triggered throughout the crypto industry.

Mr. McKernan, your current job is advising Republicans on the Senate Banking Committee, so I assume you have been watching this closely. From what you can tell so far, has the contagion that

has spread through the crypto industry shaken our traditional banking system.

Mr. MCKERNAN. No, Senator.

Senator WARREN. No, and that is the good news. But it did not happen by accident. Our banks stayed safe even as crypto imploded because many of President Biden's regulators, like Acting Chairman Gruenberg, fought to keep crypto from becoming dangerously intertwined with our banks, and he did this despite the Trump administration's and crypto boosters' aggressive efforts to bring crypto and all its risks into traditional banking.

So Acting Chairman Gruenberg, if the crypto boosters had gotten their wish and a bunch of banks that the FDIC insures were all in on crypto, for example, holding FTX's tokens on their balance sheets or accepting crypto tokens as collateral for loans, would our banking system be less safe than it is today?

Mr. GRUENBERG. I would think so, Senator.

Senator WARREN. Do you want to expand on that a little?

Mr. GRUENBERG. Well, I mean, the evidence is clear now. We had companies that were engaging in highly speculative activity, highly leveraged, and vulnerable to a loss of confidence in a run. They did not have direct exposures to the insured financial institutions, and as a result the failure of those firms was really limited to the crypto space and it ended up not impacting the insured banking system.

Senator WARREN. So this tells us the power of keeping a strong line between the traditional banking system and the crypto world.

You know, more than \$1 trillion worth, and counting, of crypto has just gone up in smoke so far this year, and reports piled on top of reports have shown that the crypto industry is powered by fraud and money laundering. Even some industry boosters still argue that these toxic crypto assets should be more integrated into the real banking system, which would mean that the next time crypto stumbles, taxpayers would be on the hook to bail out these banks. No thanks on that one.

Thank you, Mr. Chairman. I have done my questions.

Chairman BROWN. Thank you, Senator Warren.

Senator Ossoff is recognized from his office.

Senator OSSOFF. Thank you, Mr. Chairman, and thank you to our panel. Congratulations on your nominations. Thank you for your ongoing service.

Mr. Gruenberg, I would like to begin with you please, sir. What do you view to be the most significant threats to U.S. and global financial stability?

Mr. GRUENBERG. That is a pretty large question, Senator. I think the changing environment relating to the conduct of monetary policy and the efforts of the Fed to respond to inflation by raising interest rates. That is an action that is not limited to the central bank in the United States but to the central banks in other major jurisdictions of the world. I think the risk there and effect of global tightening to deal with inflationary pressures does also carry the risk of significant consequence for the economies of those countries and risks to the financial systems of those respective jurisdictions. And if you are looking at the potential for financial stability risks,

I think that is something that we, in this country, and I think on a global basis, are going to have to keep a very close eye on.

Senator OSSOFF. Thank you, Mr. Gruenberg. But what would be the most concerning potential channels or mechanisms of action by which higher rates, in your view, could threaten financial stability? Which are the markets, the sectors, the assets, the trades that you believe are most vulnerable to unwinding or failing in a higher-rate environment at a scale such that there could be contagion to the overall financial system?

Mr. GRUENBERG. Probably two points I would make. One, I think the banking system itself in the United States does have significant exposure to interest rate risk. A lot of our banks have made longer-term loans that are now susceptible to rising interest rates, and there is an overhang of unrealized losses on the books of our banks that is very substantial and that could be problematic, depending on how the economy evolves.

And then outside of the banking system, in the nonbank financial sector, we have a less clear line of sight, and the potential for significant leverage accumulating there, and I think that is a matter of attention for us. It has been a focus of priority for the FSOC, the Financial Stability Oversight Council, and the FDIC has been participating in that work, along with the other Federal financial regulators.

Senator OSSOFF. Thank you. Within the commercial banking system can you please characterize in more detail that overhang, to use your term, to which you refer? Where is the most significant leverage that poses the most significant risk? Who are the borrowers?

Mr. GRUENBERG. Well, it is actually securities that are being held on the balance sheets of our banks, longer-term securities, that banks accumulated during the prolonged period of very low interest rates. They accumulated longer-term securities on their balance sheets to try to manage a narrow interest rate environment. But as rates are now rising, those securities actually have a negative value on the balance sheets of the institutions. The most recent quarterly banking profile that the FDIC released, we noted that there is about \$470 billion of unrealized losses on the balance sheets of our institutions. We are going to release the QBP tomorrow for this third quarter, and I can tell you now that number has increased.

So that is an overhang. Right now our banks have strong liquidity so they should not have to dispose of those assets. But as the market evolves and banks may need to dispose of those assets, there are substantial unrealized losses that could impact our institutions.

Senator OSSOFF. Thank you, Mr. Gruenberg. Final question. Chair Powell, Secretary Yellen, Chair Gensler have all expressed varying levels of concern about liquidity in Treasury markets. What is your assessment of the level of risk there and how might liquidity concerns in Treasury markets translate to issues that could impact depositors and those you are entrusted with protecting? Thank you.

Mr. GRUENBERG. Well, if I may say, in the first instance on matters such as that I defer to the Treasury Secretary and the Fed Chair.

Senator OSSOFF. Mr. Gruenberg, you must have a view on whether, as a member of the FSOC and given your current responsibilities, you must have a view on whether liquidity in Treasury markets is a matter of concern for financial stability and for the depositors that you defend. Yes?

Mr. GRUENBERG. No, I think it is an issue. It has been raised by the officials you reference. I think it has been principally—so there is an issue there. I think it has principally been driven by the volatility in the financial markets and the economic uncertainty that I think is the impetus for that volatility. And it is an issue for the Fed and the Treasury that I know they are very focused on.

I think in terms of the banking industry, Treasury securities are important. The industry holds large amounts of it on their balance sheet, and it goes back to the point I just raised in terms of the possible risks on the balance sheet of our banks from holding those securities with unrealized losses.

Senator OSSOFF. Thank you, Mr. Chairman.

Chairman BROWN. Thank you, Senator Ossoff.

Senator Toomey, we will close. Senator Toomey has a few remarks, then I will make a few remarks.

Senator TOOMEY. Thank you, Mr. Chairman. I will be brief but I just feel the need to respond. Chair McWilliams, the past Chair of the FDIC, was the subject of what I think are really outrageous allegations, and I want to make it very clear that she is a highly reputable person who operated and served at the FDIC with the highest legal and ethical standards, the utmost integrity. And in the incidents that we have discussed this morning, she was exercising the authority that every Chair of the FDIC has had and exercised for 90 years.

And let me just say a brief word about crypto because that has come up a lot as well. I think there is a danger that some of us confuse bad behavior by individual people with the instruments they use to conduct their bad behavior. There is nothing that I am aware of, and I have studied this pretty closely, about what happened at FTX that requires us to blame crypto. It was the misuse of customer accounts by an individual who controlled them, and that could have been done, and in fact has been done, in conventional, non-crypto financial institutions many, many times.

I think it is much more useful to think about these various crypto projects as operating systems, software protocols on which we are likely to see amazingly powerful apps that will solve problems for everyday Americans, in the ordinary physical economy, across a very, very wide range, much of which we cannot imagine today any more than many of us were able to imagine with the beginning of the internet, the Amazons and Googles and Ubers and all the other apps that have completely changed America's economy.

Thank you, Mr. Chairman.

Chairman BROWN. Thank you, Senator Toomey, and I obviously respectfully disagree. The concern about crypto increasingly is our national security, and what we are seeing with people that are try-

ing to evade sanctions. And I think we have not shown a real public purpose for crypto, especially contrasted with the potential danger.

Briefly on the McWilliams incident, FDIC, it has never been the tradition for a Chair to refuse to put an item on the agenda. Mr. Gruenberg and others made several attempts to work with the former Chair in good faith, and she chose to resign. That is the important point there.

Thank you to our nominees for being here. We will work together as a Committee to move forward quickly on the nominations. For Senators who wish to submit questions, they are due at close of business Monday, December 5th, at noon. To nominees, we would like to have your responses by Friday, December 9th, at 5 p.m.

Thank you again for your willingness to serve the public, all four of you. The meeting is adjourned.

[Whereupon, at 11:57 a.m., the hearing was adjourned.]

[Prepared statements, biographical sketches of nominees, responses to written questions, and additional material supplied for the record follow:]

**PREPARED STATEMENT OF CHAIRMAN SHERROD BROWN**

The Committee meets today to consider four nominations:

The Honorable Martin Gruenberg to be a Member and Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, or FDIC.

Mr. Travis Hill to be a Member and Vice Chairperson of the FDIC.

Mr. Jonathan McKernan to be a Member of the Board of Directors of the FDIC.

Finally, Dr. Kimberly McClain to be Assistant Secretary for Congressional and Intergovernmental Relations at the Department of Housing and Urban Development.

We thank the nominees for appearing here today and for their willingness to serve our country at this important time, and we welcome their families and friends who are in attendance as well as those watching from home.

The FDIC is responsible for insuring deposits and supervision of over 5,000 banks and savings associations. The agency is governed by a Board of Directors, which Congress has authorized to fulfill its mission to, “maintain stability and public confidence in the Nation’s financial system.”

All five members of the Board are appointed by the President and confirmed by the Senate, and the Board is tasked with governing the FDIC.

Today, our Committee will consider three of the five FDIC seats on the Board, including the Chair and Vice Chair nominees.

Marty Gruenberg is the President’s nominee to serve as Chair of FDIC. Mr. Gruenberg is exceptionally well-qualified and has dedicated his career to serving the public and ensuring that our banking system is safe and strong.

Since 2005, Mr. Gruenberg has served as a member of the FDIC Board of Directors in various capacities: Chairman, Acting Chairman, Vice Chairman, and Member. The Senate has unanimously confirmed Mr. Gruenberg five times.

During his tenure on the FDIC Board, Mr. Gruenberg has been a fierce defender of consumers, taxpayers, and small businesses—the people that make this country run. He has also seen our banking system at its highest and lowest points—and helped ensure the stability of our financial system through the 2008 Great Recession.

Under his leadership, the agency has put in place important safeguards following the financial crisis, taken steps to strengthen the Community Reinvestment Act, and worked with banks to prepare for the risks that pose threats to our financial system—like cyberthreats and climate change.

He has the experience and dedication we need at the FDIC. If confirmed as Chair, Mr. Gruenberg will continue working to protect our financial system so that when Americans place their money in FDIC-insured banks, they know their money will be protected.

At Mr. Gruenberg’s nomination hearing to be Chairman of the FDIC more than a decade ago, Senator Sarbanes, who Mr. Gruenberg staffed on this very dais, said that, “Marty is extremely well prepared to serve as its [FDIC] Chairman. He would bring right from the beginning stability and continuity to the work of the FDIC.”

Those words still ring true today.

It has been only a few weeks since you last appeared before us, Mr. Gruenberg. Welcome back.

Travis Hill is nominated to serve as Vice Chairman of the FDIC. Most recently, Mr. Hill served as Senior Advisor to the former Chair of the FDIC, Jelena McWilliams, and Deputy to the Chairman for Policy. Before joining the FDIC in 2018, he worked on the staff of this Committee for Chairmen Shelby and Crapo.

Welcome back to the Committee, Mr. Hill.

Jonathan McKernan is nominated to serve as a Member of the Board of Directors at the FDIC. Since 2019, Mr. McKernan has served at the Federal Housing Finance Agency, or FHFA. He is currently on detail from FHFA to Ranking Member Toomey’s Banking and Housing Committee staff.

Prior to joining FHFA, Mr. McKernan served at the Treasury Department. Before serving at the Treasury Department, he worked for our former colleague, Senator Bob Corker from Tennessee. Earlier in his career, Mr. McKernan worked in private law practice here in Washington.

Welcome, Mr. McKernan.

Mr. Hill and Mr. McKernan, if confirmed as the two newest board members, you will be joining the agency at a critical time as the country emerges from the coronavirus pandemic and the banking system faces new challenges.

I would like to hear about how you will approach working with Mr. Gruenberg and the other FDIC board members to protect consumers, serve all Americans, and stay ahead of risks to our financial system. I expect financial regulators to demonstrate that they are committed to serving Main Street, not Wall Street.

Finally, our last nominee before the Committee today is Dr. Kimberly McClain—President Biden’s nominee to serve as Assistant Secretary for Congressional and Intergovernmental Relations at the Department of Housing and Urban Development.

HUD’s programs help create equal access to opportunity for all through responsible access to housing credit, promotion of fair housing, assistance that helps renters and those experiencing homelessness to find safe, stable homes, and support for States, tribes, and local governments as they address their housing and community development needs.

If confirmed, Dr. McClain will manage an office responsible for coordinating with congressional offices and Federal, State, and local government agencies.

Dr. McClain is an Air Force veteran who currently serves as the Deputy Assistant Secretary for Legislative Affairs at the Department of Veterans Affairs, or VA. She possesses over 30 years of combined legislative, international affairs, and policy experience.

Before joining the VA, Dr. McClain worked as the Director for Congressional Strategy at the Air Force. Dr. McClain has also previously served at the Department of Defense and other defense agencies in legislative affairs and policy positions.

Welcome, Dr. McClain, and thank you for your many years of devoted service to our country.

Thank you, again, to all the nominees for being here today.

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#### **PREPARED STATEMENT OF SENATOR PATRICK J. TOOMEY**

Thank you, Mr. Chairman. We’re here today to consider four nominations: Marty Gruenberg to be FDIC Chairman; Travis Hill to be FDIC Vice Chairman; Jonathan McKernan to be an FDIC Board Member; and Kimberly Ann McClain to be HUD Assistant Secretary for Congressional and Intergovernmental Relations.

The FDIC nominations represent a long overdue return to normal order. The agency has not been governed by a full, five-member board since 2015 and has not had a vice chairman for over 4 years. But more troubling, after former Chairman Jelena McWilliams was virtually forced out in February, the Board has been comprised of only three members—all of the same political party and two of whom serve in an acting capacity.

While I commend the Biden administration for finally nominating a full slate of FDIC Directors—including a permanent chairman and a vice chairman—I have several concerns with acting Chairman Gruenberg’s nomination to again serve in that role permanently based on his previous actions. Last year, Mr. Gruenberg helped to lead a partisan power grab at the FDIC Board under which he and his fellow Democrat Board members disregarded nearly 90 years of agency precedent of allowing the chair to set the agency’s agenda. Until this coup, which forced out Chairman McWilliams, all FDIC Board members—Democrat and Republican—had followed this precedent.

During the Obama administration, the Department of Justice and financial regulators launched the now-infamous “Operation Choke Point.” This program attempted to coerce banks into denying services to lawful yet politically disfavored businesses, such as firearm manufacturers and payday lenders. The FDIC’s own Inspector General found that FDIC personnel targeted these businesses “consistent with a widely held understanding that the highest levels of the FDIC disfavored these types of banking services.” The highest levels of the FDIC included Mr. Gruenberg, who led the FDIC from 2011 through mid-2018. And we know from court documents in Operation Choke Point-related litigation that Mr. Gruenberg and his team played a role in directing banks to cease relationships with payday lenders. I remain concerned that some of the Left still believe in Choke Point’s central tenant: that financial regulators should misuse the regulatory apparatus to de-bank or limit credit to lawful, yet politically disfavored businesses. As we’ve seen in word and deed from other nominees, this is a very real threat to businesses in the traditional energy sector.

I worry that this pattern of pressuring banks not to provide services to lawful but disfavored businesses may be again emerging at Mr. Gruenberg’s direction.

Earlier this year, my office received whistleblower reports that the FDIC has been deterring banks from doing business with crypto-related companies. I understand that one “paused” activity is custody of crypto assets. This activity has not disappeared, but rather has simply migrated to less regulated companies, often in foreign jurisdictions with weaker regulatory regimes. And we’ve just once again seen how that ends.

Finally, based on Mr. Gruenberg's 9 months as Acting Chair—as well as the events that led to his time in that role—I'm concerned that he will continue to politicize the agency. On his very first day as Acting Chair, Mr. Gruenberg announced that the FDIC would join the "Network for the Greening the Financial System," an international group committed to denying capital to carbon-emitting industries. While I appreciate his recent acknowledgment that "credit allocation decisions are responsibilities of financial institutions," this statement appears to be in conflict with his actions. Just two months into his tenure, Mr. Gruenberg reversed common-sense changes to the FDIC's supervisory appeals process that provided banks with due process. The change overhauled the independent Office of Supervisory Appeals established by his predecessor and reinstated the previous process under which agency insiders would hear appeals. This decision raises questions about whether the process can operate fairly and impartially.

If confirmed, I urge Mr. Gruenberg to depoliticize the agency's work and restore the FDIC's independence.

Today, we will also hear from Travis Hill and Jonathan McKernan. Both nominees are extremely well qualified to serve on the FDIC Board.

Mr. Hill's significant experience in both the legislative and executive branch will deepen the FDIC Board's expertise and enhance the quality of its deliberations. As senior counsel on the Banking Committee, he worked on several pieces of bipartisan legislation over several Congresses. And during his time as an advisor to former FDIC Chairman McWilliams, he spearheaded numerous policy initiatives, working constructively with agency career staff and other Board members. I commend him for his public service, and I look forward to hearing how he will approach his role as FDIC Vice Chair.

In a few moments, Senator Corker will introduce Mr. McKernan, an exceptional nominee with valuable private sector experience and a commitment to public service.

I have personally worked with Jonathan during his time as an FHFA attorney detailed to the Banking Committee. I know firsthand that his knowledge of banking and housing finance issues will equip him well to serve on the FDIC Board. In addition to his substantive expertise, I have been impressed by his diligence and character, and I look forward to supporting his nomination.

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### **PREPARED STATEMENT OF MARTIN GRUENBERG**

TO BE A MEMBER AND CHAIRPERSON OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

NOVEMBER 30, 2022

Chairman Brown, Ranking Member Toomey, Members of the Committee, it is my honor to appear before you as the President's nominee to serve as Chairman and Member of the Board of the Federal Deposit Insurance Corporation.

I would like to thank President Biden for the honor of this nomination, and Chairman Brown and Ranking Member Toomey for scheduling this confirmation hearing. I would also like to thank Senator Van Hollen for his kind introduction.

I have had the privilege of serving as a member of the FDIC Board since August 2005, and as Vice Chairman, Chairman, and Acting Chairman during that period. I served as Vice Chairman during the Global Financial Crisis of 2008 and its immediate aftermath, and as Acting Chairman and Chairman during the post-crisis recovery period.

Prior to joining the FDIC, I worked for Senator Sarbanes on the staff of the Senate Committee on Banking, Housing, and Urban Affairs from January 1987 to August 2005. During that period, I had the opportunity to work on major legislation including FIRREA, FDICIA, the Riegle-Neal Interstate Banking Act, the Gramm-Leach-Bliley Act, and the Sarbanes-Oxley Act.

A reasonable question to ask is why, after serving on the FDIC Board for such a long period, I would seek nomination to serve as Chairman again?

The answer is pretty straightforward. My parents, who were Holocaust survivors from Poland, gave me the gift of being born in this country. Public service is a calling that has always been most meaningful to me. The FDIC is a great agency of our Government, whose mission of maintaining public confidence and stability in our financial system is critical to our country's well-being. The opportunity to serve on the FDIC Board and to provide leadership as Chairman has been the greatest honor of my life. I can think of no opportunity that would have greater meaning to me than the chance to continue to serve.

As I indicated in testimony before this Committee two weeks ago, the banking industry enters the current period of economic uncertainty in a position of significant strength. The industry is experiencing strong loan growth and continued good asset quality measures, and remains well-capitalized and highly liquid. However, it continues to face significant downside risks from inflation, rising market interest rates, and geopolitical uncertainty. Taken together, these risks may reduce profitability, weaken credit quality and capital, and limit loan growth in coming quarters. These will be matters of ongoing supervisory attention by the FDIC for the near-term.

In my testimony I also outlined key policy priorities for the FDIC for the remainder of this year and next including maintaining a strong Deposit Insurance Fund, strengthening the Community Reinvestment Act, addressing the financial risks of climate change, reviewing the bank merger process, evaluating the risks of crypto-assets to the banking system, and finalizing the Basel III capital rules.

In addition, I highlighted the FDIC's efforts to support Minority Depository Institutions and Community Development Financial Institutions, promote a diverse and inclusive workplace at the FDIC, and strengthen cybersecurity and information security within the banking industry.

I would like to conclude this statement with two acknowledgements.

First, the last time I appeared before this Committee for a confirmation hearing I had the honor of being introduced by Senator Sarbanes. Most of what I know about public service I learned from him, and from serving on the staff of this Committee. His integrity, intelligence, and judgment were such that not a day that goes by that I don't ask myself, "What would Senator Sarbanes do?"

Finally, I would like to acknowledge the dedication and extraordinary capabilities of the employees of the FDIC who have performed with such distinction throughout my tenure at the agency, especially during times of crisis. They are deeply committed to the FDIC's mission and serve our country well every day.

That concludes my statement. I would be glad to respond to your questions.



**Employment record:** List below all positions held since graduation from college including the title or description of job, name of employer, location of work, and inclusive dates of employment.

- Acting Chairman and Member, Board of Directors, Federal Deposit Insurance Corporation, Washington, D.C. February 2022-present
- Member, Board of Directors, Federal Deposit Insurance Corporation, Washington, D.C. June 2018-present
- Chairman and Member, Board of Directors, Federal Deposit Insurance Corporation, Washington, D.C. November 2012-June 2018
- Vice Chairman and Member, Board of Directors, Federal Deposit Insurance Corporation, Washington, D.C. August 2005-November 2012
- Senior Democratic Counsel, Committee on Banking, Housing, and Urban Affairs, United States Senate, Washington, D.C. 1995-2005
- Counsel, Committee on Banking, Housing, and Urban Affairs, United States Senate, Washington, D.C. 1993-1994
- Staff Director, Subcommittee on International Finance and Monetary Policy, Committee on Banking, Housing, and Urban Affairs, United States Senate, Washington, D.C. 1987-1992
- Legislative Assistant, Senator Paul S. Sarbanes, United States Senate, Washington, D.C. 1986
- Professional Staff Member, Subcommittee on Economic Stabilization, Committee on Banking, Housing, and Urban Affairs, United States House of Representatives, Washington, D.C. 1984-1986
- Legislative Assistant, Representative Sander M. Levin, United States House of Representatives, Washington, D.C. 1983-1984
- Legislative Assistant, Representative Jonathan B. Bingham, United States House of Representatives, Washington, D.C. 1979-1982

**Government Experience:** List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other (including part-time) service or positions.

Name of Government Entity	Position	Dates of Service
Acting Chairman and Member, Board of Directors, Federal Deposit Insurance Corporation, Washington, D.C.		February 2022-present
Member, Board of Directors, Federal Deposit Insurance Corporation, Washington, D.C.		June 2018-present
Chairman and Member, Board of Directors, Federal Deposit Insurance Corporation, Washington, D.C.		November 2012-June 2018
Vice Chairman and Member, Board of Directors, Federal Deposit Insurance Corporation, Washington, D.C.		August 2005-November 2012
Senior Democratic Counsel, Committee on Banking, Housing, and Urban Affairs, United States Senate, Washington, D.C.		1995-2005

Counsel, Committee on Banking, Housing, and Urban Affairs, United States Senate, Washington, D.C. 1993-1994

Staff Director, Subcommittee on International Finance and Monetary Policy, Committee on Banking, Housing, and Urban Affairs, United States Senate, Washington, D.C. 1987-1992

Legislative Assistant, Senator Paul S. Sarbanes, United States Senate, Washington, D.C. 1986

Professional Staff Member, Subcommittee on Economic Stabilization, Committee on Banking, Housing, and Urban Affairs, United States House of Representatives, Washington, D.C. 1984-1986

Legislative Assistant, Representative Sander M. Levin, United States House of Representatives, Washington, D.C. 1983-1984

Legislative Assistant, Representative Jonathan B. Bingham, United States House of Representatives, Washington, D.C. 1979-1982

**Published writings:** List the titles, publishers and dates of books, articles, reports and other published materials you have written. The list should include any publicly accessible publications on the internet in the past ten years, including appropriate URLs for any posts on blogs you maintained or contributed to, and URLs for any other significant internet-based postings during that same period. If available, provide the Committee with **one digital copy** of each of the writings you list.

“When Global Banks Fail, Resolve Them Globally”, by Martin Gruenberg and Paul Tucker, Financial Times, December 9, 2012

“Unrecognized Lessons of the Archegos Collapse”, by Martin Gruenberg, Bloomberg, May 17, 2021

**Speeches and presentations:** List all of the formal speeches and presentations (e.g., PowerPoint) you have delivered during the past ten years which are on topics relevant to the position for which you have been nominated, including dates. If available, provide the Committee with **one digital copy** of each formal speech and presentation. If text is no longer available, list the date, place, and organization or group to whom you made the speech or presentation.

A listing of speeches is attached hereto. All speeches, testimony, and statements while serving at the FDIC are available at:  
<https://www.fdic.gov/about/learn/board/gruenberg/index.html>.

**Public statements:** List all public statements you have made during the past ten years which are on topics relevant to the position for which you have been nominated, including dates. Whenever possible, provide the Committee with finding aids (such as citations, internet URLs, etc.) for each statement.

A listing of speeches is attached hereto. All speeches, testimony, and statements while serving at the FDIC are available at:  
<https://www.fdic.gov/about/learn/board/gruenberg/index.html>.

**Social media usernames:** Please provide a list of all of your currently active social media usernames (e.g., Facebook, Instagram, Twitter, etc.), and any usernames for any inactive accounts you have used within the previous ten years.

N/A

**Political affiliations activities:** List memberships and offices held in and services rendered to all political parties or election committees during the last ten years.

Member, Democratic Party

List all public offices, if any, for which you have been a candidate in the past ten years.

Name of Office	Elected/Appointed Candidate Only	Year(s) Election Held or Appointment Made	Terms of Service (if applicable)
N/A			

**Political contributions:** Itemize all political contributions which exceed \$200 or which aggregate to over \$200 in a calendar year to any individual, campaign organization, political party, political action committee or similar entity during the last ten years and identify specific amounts, dates, and names of recipients.

N/A

**Qualifications:** State fully your qualifications to serve in the position to which you have been named. (attach sheet)

I served as Vice Chairman and Member of the Board of Directors of the FDIC from August 2005-November 2012, Chairman and Member of the Board of Directors of the FDIC from November 2012-June 2018, and Member of the Board of Directors of the FDIC from June 2018-February 2022. Since February 2022 I have been serving as Acting Chairman and Member of the Board of Directors of the FDIC.

**Future Employment relationships:** 1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Since I currently work for the FDIC, I would continue that relationship.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization

No.

3. Has anyone made a commitment to employ you after you leave government service?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

**Potential conflicts of interest:**

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Deposit Insurance Corporation's (FDIC) designated agency ethics official to identify potential conflicts of interest. It was determined that there were no conflicts of interest. I have entered into an ethics agreement with the FDIC's designated agency ethics official and will abide by the terms of the agreement. A copy of the agreement has been provided to the Committee.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last ten years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Deposit Insurance Corporation's (FDIC) designated agency ethics official to identify potential conflicts of interest. It was determined that there were no conflicts of interest. I have entered into an ethics agreement with the FDIC's designated agency ethics official and will abide by the terms of the agreement. A copy of the agreement has been provided to the Committee.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None.

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Federal Deposit Insurance Corporation's (FDIC) designated agency ethics official to identify potential conflicts of interest. It was determined that there were no conflicts of interest. I have entered into an ethics agreement with the FDIC's designated agency ethics official and will abide by the terms of the agreement. A copy of the agreement has been provided to the Committee.

**Tax compliance and bankruptcy:**

1. In the past ten years, have you and your spouse (if applicable) filed and paid all taxes (federal, state, and local) as of the date of your nomination? Indicate if you filed as 'married filing separately.'

Yes.

2. In the past ten years, have you been required to make any back tax payments? If so, indicate if you have made any back tax payments and provide full details.

No.

3. Has a tax lien or other collection procedure(s) been instituted against you or your spouse (if applicable) by federal, state, or local authorities? If so, provide full details.

No.

4. In the past ten years, have you or your spouse (if applicable) ever been the subject of any audit, investigation, or inquiry for federal, state, or local taxes? If so, provide full details.

No.

5. Were all your Federal, State, local, and other tax returns and tax liabilities of any kind current (filed and paid when due) as of the date of your nomination? If not, provide details.

Yes.

6. Have you ever filed for bankruptcy? If so, provide details.

No.

**Civil, criminal and investigatory actions:**

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency (e.g. an Inspector General's office), professional association, disciplinary committee, or other ethics enforcement entity at any time? If so, provide details, regardless of outcome.

None in my personal capacity. I am aware of civil lawsuits in which I was named as a nominal defendant in my official capacity as the Chairman of the FDIC.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding, or civil litigation other than a divorce proceeding? If so, provide details.

No.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

**Other information:** Please advise the Committee of any additional information, favorable or unfavorable, which you believe should be considered in connection with your nomination.

None.

**Public Records search:** Do you consent to allow Committee staff to conduct a public records search on you using appropriate search tools, including Westlaw, Lexis, etc.?)

Yes.

The undersigned certifies that the information contained in the public statement to the Committee is true and correct.

Signed: Martin J. Truening Date: 11/16/2022

**PREPARED STATEMENT OF TRAVIS HILL**

TO BE A MEMBER AND VICE CHAIRPERSON OF THE BOARD OF DIRECTORS OF THE  
FEDERAL DEPOSIT INSURANCE CORPORATION

NOVEMBER 30, 2022

Thank you Chairman Brown, Ranking Member Toomey, and Members of the Committee. It is an honor to have been nominated by the President to serve as a member of the Board of Directors at the Federal Deposit Insurance Corporation, and to appear before you today.

Joining me this morning are my wife Lauren and my son Wesley, while my daughter Whitney is watching from afar. I am continually grateful for all their love and support. I am also joined by my parents, John and Nicole, who have traveled here from New York, and from whom I have learned the importance of hard work, responsibility, and too many life lessons to list.

Public service is something I do not take lightly. All 4 of my grandparents came to this country as immigrants, including two who were German Jews escaping the Nazis. Both of my grandfathers subsequently volunteered to fight in World War II, and in the ensuing years, one of them rose to manage a chain of restaurants despite never having attended high school, while the other started a company importing minerals from India. I grew up with a deep appreciation for all this country has to offer.

I spent 5½ years working as a staff member for this Committee. I am extremely grateful to Senators Crapo and Shelby for the opportunity. During that time, I worked on a number of bipartisan bills, including the Economic Growth, Regulatory Relief, and Consumer Protection Act, commonly referred to as S. 2155, which was signed into law in May 2018. I spent countless hours working with staff on both sides of the aisle. Through this experience, I developed a deep understanding of the ins and outs of banking laws and regulations, the value of bipartisan cooperation, and the vital oversight role Congress plays in holding Government agencies accountable to the American people.

After leaving Capitol Hill, I worked at the FDIC as an advisor to Chairman Jelena McWilliams and as her deputy for policy. In this role, I was involved in a range of FDIC policymaking initiatives, represented the agency in a number of different venues, and helped lead the agency through the COVID-19 pandemic. This experience reinforced my appreciation of the critical role the FDIC plays in promoting the safety and soundness of banks and the stability of the banking system, and ensuring that American workers and families have a safe, accessible place to leave their hard-earned savings. I also saw firsthand the exceptional expertise and experience of the FDIC staff. I look back on my time at the FDIC with great fondness, and am excited about the opportunity to return if confirmed.

Over the course of my career, I have seen the importance of a well-tailored regulatory framework that promotes economic growth, innovation, and broad access to credit, while ensuring our Nation's banks remain safe, sound, and resilient to shocks. I have also grown to deeply appreciate the value of a banking sector with institutions of many different sizes and business models, including community banks and minority depository institutions that play a crucial role in their local communities.

If confirmed, I look forward to working with Members of this Committee to ensure the FDIC continues to fulfill its critical mission, as it has done for the past 89 years.

Thank you, and I look forward to your questions.



**Employment record:** List below all positions held since graduation from college including the title or description of job, name of employer, location of work, and inclusive dates of employment.

<i>Name of employer</i>	<i>Position(s)</i>	<i>Location</i>	<i>Dates</i>
Business Executives for National Security	Research intern; Research assistant	Washington, DC	June 2006 – Sept. 2006; July 2008 – Aug. 2008
Office of the Public Defender, Prince George’s County	Law clerk	Hyattsville, MD	June 2009 – Aug. 2009
Commodity Futures Trading Commission	Legal intern	Washington, DC	June 2010 – Dec. 2010
Regions Financial Corporation	Policy analyst	Washington, DC	Oct. 2011 – March 2013
U.S. Senate Committee on Banking, Housing, and Urban Affairs	Counsel; Senior counsel	Washington, DC	April 2013 – July 2018
Federal Deposit Insurance Corporation	Senior advisor to the Chairman; Deputy to the Chairman for Policy	Washington, DC	July 2018 – Feb. 2022

**Government Experience:** List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other (including part-time) service or positions.

Name of Government Entity                      Position                      Dates of Service

None, other than employment listed above.

**Published writings:** List the titles, publishers and dates of books, articles, reports and other published materials you have written. The list should include any publicly accessible publications on the internet in the past ten years, including appropriate URLs for any posts on blogs you maintained or contributed to, and URLs for any other significant internet-based postings during that same period. If available, provide the Committee with **one digital copy** of each of the writings you list.

Co-Author, Antitrust Violations, 47 Am. Crim. L. Rev. 245 (2010)  
*(One copy is attached.)*

**Speeches and presentations:** List all of the formal speeches and presentations (e.g., PowerPoint) you have delivered during the past ten years which are on topics relevant to the position for which you have been nominated, including dates. If available, provide the Committee with **one digital copy** of each formal speech and presentation. If text is no longer available, list the date, place, and organization or group to whom you made the speech or presentation.

None.

**Public statements:** List all public statements you have made during the past ten years which are on topics relevant to the position for which you have been nominated, including dates. Whenever possible, provide the Committee with finding aids (such as citations, internet URLs, etc.) for each statement.

I have on several occasions appeared on panels where I discussed topics relevant to the position. I have been quoted in articles on two occasions that I can recall, neither of which appears to be available via google search. One instance was a politico pro article on January 7, 2017, which I have enclosed below for convenience, though I am not sure if it still exists online. The other instance was a Bloomberg law article around March 2019, but I cannot find any record of it, and I do not recall the exact date.

**Social media usernames:** Please provide a list of all of your currently active social media usernames (e.g., Facebook, Instagram, Twitter, etc.), and any usernames for any inactive accounts you have used within the previous ten years.

Facebook – Travis Hill  
Instagram – teev2  
Twitter – @thillteev

*(All currently active. No inactive accounts that have been used in past 10 years.)*

**Political affiliations and activities:** List memberships and offices held in and services rendered to all political parties or election committees during the last ten years.

- Volunteered at 2012 Republican National Convention
- Volunteered for Rep. Nan Hayworth (R-NY) campaign for final 3 days of 2012 election campaign

List all public offices, if any, for which you have been a candidate in the past ten years.

Name of Office	Elected/Appointed Candidate Only	Year(s) Election Held or Appointment Made	Terms of Service (if applicable)
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None

**Political contributions:** Itemize all political contributions which exceed \$200 or which aggregate to over \$200 in a calendar year to any individual, campaign organization, political party, political action committee or similar entity during the last ten years and identify specific amounts, dates, and names of recipients.

None

**Qualifications:** State fully your qualifications to serve in the position to which you have been named.  
(attach sheet)

See enclosed document below.

**Future Employment relationships:** 1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Not currently employed, but will sever connections to any employer I am working for at the time of confirmation if applicable.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization

None.

3. Has anyone made a commitment to employ you after you leave government service?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

**Potential conflicts of interest:** 1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last ten years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None.

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

N/A.

**Tax compliance and bankruptcy:**

1. In the past ten years, have you and your spouse (if applicable) filed and paid all taxes (federal, state, and local) as of the date of your nomination? Indicate if you filed as 'married filing separately.'

Yes.

2. In the past ten years, have you been required to make any back tax payments? If so, indicate if you have made any back tax payments and provide full details.

No.

3. Has a tax lien or other collection procedure(s) been instituted against you or your spouse (if applicable) by federal, state, or local authorities? If so, provide full details.

No.

4. In the past ten years, have you or your spouse (if applicable) ever been the subject of any audit, investigation, or inquiry for federal, state, or local taxes? If so, provide full details.

No.

5. Were all your Federal, State, local, and other tax returns and tax liabilities of any kind current (filed and paid when due) as of the date of your nomination? If not, provide details.

Yes.

6. Have you ever filed for bankruptcy? If so, provide details.

No.

**Civil, criminal and investigatory actions:** 1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency (e.g. an Inspector General's office), professional association, disciplinary committee, or other ethics enforcement entity at any time? If so, provide details, regardless of outcome.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

When I was 18 years old, in January 2002, I received a summons to appear in court for disorderly conduct for tapping a train conductor on the head at a train station in New Rochelle, NY. The case was dismissed and the summons expunged. (I do not know if this qualifies as being "charged" but am including in any event.)

3. Have you ever been involved as a party in interest in any administrative agency proceeding, or civil litigation other than a divorce proceeding? If so, provide details.

When I was 17 years old, in June 2001, I was badly injured in an automobile accident in which I was a passenger in a car that hit a pole going 77 miles per hour. I filed a lawsuit against the driver of the car, and the case was settled out of court in 2004.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

**Other information:** Please advise the Committee of any additional information, favorable or unfavorable, which you believe should be considered in connection with your nomination.

**Public Records search:** Do you consent to allow Committee staff to conduct a public records search on you using appropriate search tools, including Westlaw, Lexis, etc.?)

Yes.

The undersigned certifies that the information contained in the public statement to the Committee is true and correct.

Signed: 

Date: April 12, 2022

**PREPARED STATEMENT OF JONATHAN MCKERNAN**  
TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT  
INSURANCE CORPORATION

NOVEMBER 30, 2022

Chairman Brown, Ranking Member Toomey, and Members of the Committee, it is an honor to appear before you today. I am humbled to have been nominated to be a member of the Board of Directors of the Federal Deposit Insurance Corporation (FDIC). I am grateful to the President for entrusting me with this nomination, to Senator Corker for giving me my first job as Senate staffer, and to Ranking Member Toomey for giving me another opportunity to continue public service here in the Senate.

My wife, Sapna Sharma, is here with me today. She and I met on the Hill when we were both starting out as congressional staffers. Despite serving on different sides of the aisle, Sapna and I quickly found common ground in our shared passion for the ideals that make this country great. Five years later, we have two boys, 20-month-old Patrick and 4-month-old Jonathan. I hope that together we will instill in our children a love of country and public service, while also teaching them to find common ground with others who have different worldviews.

My parents, Patrick and Victoria, are here today from East Tennessee. My father is a former Navy pilot and sales representative. My mother is a retired school-teacher and homemaker. From my parents I learned the importance of hard work and perseverance, as well as an attachment to reading and learning, that together have provided a solid foundation for life. My brother Paul and his wife Kensie are here today as well. Both are also former Senate staffers, having met while working for Senator Alexander. My brother Jason and sister Christine also are with us virtually.

I believe my 15 years in financial services law, regulation, and policy have prepared me well to support the FDIC in its work to maintain stability and public confidence in the Nation's financial system. My first role in Government was as an advisor to Senator Corker on banking matters, including this Committee's bipartisan S.2155 reform legislation and the Senator's efforts to negotiate bipartisan housing finance reform legislation. I then served as an advisor at the Department of the Treasury and the Federal Housing Finance Agency (FHFA), and am now on detail from FHFA to this Committee. I have immensely valued my time here and believe this Committee represents the best of those in public service.

Before joining Senator Corker's staff, I worked for more than 9 years as a banking lawyer. My time in private practice began just as the 2008 financial crisis was beginning. We all watched as hundreds of billions of taxpayer dollars were spent bailing out "too big to fail" financial institutions, millions of homeowners were wiped out by foreclosures, and almost every American family suffered in some way through the economic fallout that followed. The aftershocks of the crisis still reverberate 15 years later. Many American families will never recover the lost generational wealth. Many others remain convinced the system is rigged against them.

That experience left me with an enduring conviction that we as a society must have a strong financial regulatory system that ensures we do not repeat the mistakes of the past. The FDIC's mission therefore resonates deeply with me. If confirmed, I would be strongly committed to ensuring the FDIC does its part to maintain a resilient financial system. I thank you for your consideration and look forward to your questions.



**STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES**

**Name:** McKernan Jonathan Patrick  
(Last) (First) (Other)

**Position to which nominated:** Federal Deposit Insurance Corporation, Board Member

**Date of nomination:** September 22, 2022

**City of Residence:** Washington, D.C.

**Education\*:** Institution Dates Attended Degrees Received Dates of Degree

Institution	Dates Attended	Degrees Received	Dates of Degrees
Duke University School of Law	2004-2007	JD	May 2007
University of Tennessee	2001-2003	MA in economics	Dec. 2003
Moscow International University**	2002-2003	N/A	N/A
Middlebury College Russian Summer School	2002	N/A	N/A
University of Tennessee	1997-2001	BA in economics	May 2001

\*Nominees should provide information for all institutions attended, whether or not the nominee was granted a degree by the institution

\*\* I remained enrolled at the University of Tennessee during my studies at Moscow International University from August 2002 to May 2003.

**Honors and awards:** List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

*Law School*

- Order of the Coif (top 10% of graduating class)
- High Honors
- Duke Law Journal
- Class of 1968 Scholarship

*Graduate School*

- Department of Economics funding for tuition and a stipend
- National Security Education Program (NSEP) Boren Fellowship

*Undergraduate School*

- Top Graduate – College of Arts & Science
- Summa cum laude
- Honors Department
- Scholarships for tuition and expenses, including the Bicentennial Scholarship, Ned McWherter Scholarship, Elizabeth Buford Shepherd Scholarship, Department of Economics Frank B. Ward Scholarship, Baxter-Allegiance Scholarship, and Freshman Alumni Scholarship
- Several honor societies: Phi Beta Kappa; Phi Kappa Phi; Phi Eta Sigma; and Pi Mu Epsilon

*High School*

- Valedictorian

**Memberships:** List below all memberships and offices held in professional, fraternal, business, scholarly, civic, social, charitable and other organizations.

Organization      Office Held (if any)      Dates of Membership

Organization	Office Held (if any)	Dates of Membership
District of Columbia Bar Association	N/A	2007-Present
Virginia Bar Association	N/A	2007-Present
The Boren Forum Inc.*	Director Secretary	2010-2013 (estimated)
Federalist Society Student Chapter, Duke University School of Law	Executive Committee	2004-2007
Law & Economics Society, Duke University School of Law	N/A	2005-2007 (estimated)

\* 501(c)(3) nonprofit alumni organization of National Security Education Program Boren Scholars and Fellows.

**Employment record:** List below all positions held since graduation from college including the title or description of job, name of employer, location of work, and inclusive dates of employment.

*U.S. Senate Committee on Banking, Housing, and Urban Affairs*

- Counsel (detailed from the Federal Housing Finance Agency)
- 534 Dirksen Senate Office Building, Washington, D.C. 20510
- 01/2021-Present

*Federal Housing Finance Agency*

- Senior Counsel for Policy
- 400 7<sup>th</sup> St. SW, Washington, D.C. 20219
- 10/2019-Present

*United States Department of the Treasury*

- Senior Policy Advisor
- 1500 Pennsylvania Ave. NW, Washington, D.C. 20220
- 11/2018-10/2019

*U.S. Senator Bob Corker*

- Senior Financial Policy Advisor
- Dirksen Senate Office Building, SD-425, Washington, D.C. 20510
- 01/2017-11/2018

*Wilmer Cutler Pickering Hale and Dorr*

- Counsel
- 1875 Pennsylvania Ave. NW, Washington, D.C. 20006
- 03/2011-12/2013 (senior associate)
- 01/2014-01/2017 (counsel)

*Hogan Lovells*

- Associate
- 555 13<sup>th</sup> St. NW, Washington, D.C. 20004
- 10/2007-03/2011

*Covington & Burling*

- Summer Associate
- 1201 Pennsylvania Ave. NW, Washington, D.C. 20004
- 05/2006-8/2006

*Hogan & Hartson*

- Summer Associate
- 555 13<sup>th</sup> St. NW, Washington, D.C. 20004
- 05/2005-08/2005

*International Trade Administration, Department of Commerce*

- Analyst
- 1401 Constitution Ave. NW, Washington, D.C. 20230
- 09/2003-07/2004

**Government Experience:** List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other (including part-time) service or positions.

Name of Government Entity                      Position                      Dates of Service

<b>Name of Government Entity</b>	<b>Position</b>	<b>Dates of Service</b>
U.S. Senate Committee on Banking, Housing, and Urban Affairs	Counsel (Detailed from FHFA)	01/2021-Present
Federal Housing Finance Agency	Senior Counsel for Policy	10/2020-Present
United States Department of the Treasury	Senior Policy Advisor	11/2018-10/2019
U.S. Senator Bob Corker	Senior Financial Policy Advisor	01/2017-11/2018
International Trade Administration	Analyst	09/2003-07/2004
Tennessee Advisory Commission on Intergovernmental Relations	Intern	06/1999-07/1999

**Published writings:** List the titles, publishers and dates of books, articles, reports and other published materials you have written. The list should include any publicly accessible publications on the internet in the past ten years, including appropriate URLs for any posts on blogs you maintained or contributed to, and URLs for any other significant internet-based postings during that same period. If available, provide the Committee with **one digital copy** of each of the writings you list.

Franca Harris Gutierrez, Daniel P. Kearney, Jonathan McKernan, Bradford Hardin Jr., and Carleton Goss, WilmerHale Client Alert – “OCC Revises CMP Policy,” March 14, 2016 [<https://www.lexology.com/library/detail.aspx?g=915348a0-77bf-4b58-9782-8fa8a5d137e4>]

Franca Harris Gutierrez, Jonathan McKernan, and Carleton Goss, WilmerHale Client Alert – “OCC Proposes Recovery Plans for Large Banks,” December 22, 2015 [<https://www.lexology.com/library/detail.aspx?g=d3994cbf-5a89-4bf8-90ef-4ce8e4d540f5>]

Franca Harris Gutierrez, Lisa Jack, Jonathan McKernan, and Eamonn Moran, WilmerHale Client Alert – “CFPB Calls For Changes to Mortgage Servicing With Proposed Rule,” November 21, 2014 [<https://www.mondaq.com/unitedstates/financial-services/355676/cfpb-calls-for-changes-to-mortgage-servicing-with-proposed-rule?type=mondaqai&score=78>]

Gail Bernstein, Matthew A. Chambers, Stephanie Nicolas, Andre E. Owens, Michael J. Blayney, Dan M. Berkovitz, Franca Harris Gutierrez, Paul M. Architzel, Russell J. Bruemmer, Yoon-Young Lee, Bruce H. Newman, Amanda Border, Jonathan McKernan, and Petal P. Walker, WilmerHale Client Alert – “The Volcker Rule Handbook: A Detailed Look At The Final Rule Implementing Section 619 Of The Dodd-Frank Act,” December 24, 2013 [[https://www.wilmerhale.com/-/media/files/Shared\\_Content/Editorial/Publications/WH\\_Publications/Client\\_Alert\\_PDFs/Volcker%20Rule%20Alert\\_12%2023%2013.pdf](https://www.wilmerhale.com/-/media/files/Shared_Content/Editorial/Publications/WH_Publications/Client_Alert_PDFs/Volcker%20Rule%20Alert_12%2023%2013.pdf)]

Russell Bruemmer, Franca Harris Gutierrez, Eric J. Mogilnicki, Jonathan G. Cedarbaum, Jonathan McKernan, and Elijah M. Alper, WilmerHale Client Alert – “OCC Releases New Guidance On Third-Party Risk Management,” October 31, 2013 [<https://www.mondaq.com/unitedstates/government-public-sector/272600/occ-releases-new-guidance-on-third-party-risk-management>]

**Speeches and presentations:**

List all of the formal speeches and presentations (e.g., PowerPoint) you have delivered during the past ten years which are on topics relevant to the position for which you have been nominated, including dates. If available, provide the Committee with **one digital copy** of each formal speech and presentation. If text is no longer available, list the date, place, and organization or group to whom you made the speech or presentation. Panel Discussion, “Managing Third-Party Risk in the Face of Increased Regulatory Expectations: Practical Tips, Strategies and Best Practices for Overseeing Your Vendors and Sub-Servicers, and the Latest Associated Data Security and Breach Issues,” American Conference Institute’s 5th Bank & Non-Bank Forum on Mortgage Servicing Compliance (November 17, 2015)

Panel Discussion, “Managing Third-Party Risk in the Face of Increased Regulatory Expectations: Practical Tips, Strategies and Best Practices for Overseeing Your Vendors and Sub-Servicers, and the Latest Associated Data Security and Breach Issues,” American Conference Institute’s 5th Bank & Non-Bank Forum on Mortgage Servicing Compliance (November 17, 2015)

Panel Discussion, “Enhancing Your Oversight and Control of Over Service Providers, Third-Party Vendors and Brokers in an Environment of Heightened Regulatory Expectations: Selection, Monitoring, Risk Management, Periodic Review, Contracts, Dealing with Non-Compliant SPs, and Exit Strategy,” American Conference Institute’s 17<sup>th</sup> National Forum on Residential Mortgage Litigation & Regulatory Enforcement (May 1, 2015)

WilmerHale Webinar, “Current Issues in Mortgage Origination and Servicing,” (March 19, 2015) [recording – <https://www.wilmerhale.com/insights/media/wilmerhale-financial->

[institutions-webinar-mar-19-2015; PowerPoint – https://www.wilmerhale.com/-/media/files/Shared\\_Content/Events/Documents/2015-03-19-WilmerHale-FinInst-Current-Issues-Mortgage-Origination-and-Svcng.pdf](https://www.wilmerhale.com/-/media/files/Shared_Content/Events/Documents/2015-03-19-WilmerHale-FinInst-Current-Issues-Mortgage-Origination-and-Svcng.pdf)

Panel Discussion, “Right-Sizing Your Servicing Operations for the ‘New Normal’,” American Conference Institute’s 3rd Bank & Non-Bank Forum on Mortgage Servicing Compliance on (November 21, 2014)

Panel Discussion, “The Future of the GSEs,” American Conference Institute’s 3rd Bank & Non-Bank Forum on Mortgage Servicing Compliance on (November 20, 2014)

Panel Discussion, “Residential Mortgage Servicing for the 21<sup>st</sup> Century,” Mortgage Bankers Association’s National Mortgage Servicing Conference & Expo 2014 (February 20, 2014)

WilmerHale Webinar, “Vendor Management Principles, Evolving Best Practices of Bank Service Providers” (February 14, 2013) [recording – [https://www.wilmerhale.com/en/insights/media/wilmerhale\\_14feb13\\_fin](https://www.wilmerhale.com/en/insights/media/wilmerhale_14feb13_fin); PowerPoint – [https://www.wilmerhale.com/-/media/files/WilmerHale\\_Shared\\_Content/Files/PDFs/WH-FinTech-Webinar-Vendor-Mgmt-14FEB13.pdf](https://www.wilmerhale.com/-/media/files/WilmerHale_Shared_Content/Files/PDFs/WH-FinTech-Webinar-Vendor-Mgmt-14FEB13.pdf)]

**Public statements:** List all public statements you have made during the past ten years which are on topics relevant to the position for which you have been nominated, including dates. Whenever possible, provide the Committee with finding aids (such as citations, internet URLs, etc.) for each statement.

None (other than the speeches and presentations listed above)

**Social media usernames:** Please provide a list of all of your currently active social media usernames (e.g., Facebook, Instagram, Twitter, etc.), and any usernames for any inactive accounts you have used within the previous ten years.

Twitter: @wchurchill2015, @JonMcKernan (reserved but never used), @jpmirabeau (deleted sometime in 2015 or 2016)

Facebook: jonathan.mckernan5; I had another Facebook account until around 2017 or 2018, but I do not recall the username.

Instagram: jp\_mckernan

LinkedIn: jonathan-mckernan-38269426

**Political affiliations activities:** List memberships and offices held in and services rendered to all political parties or election committees during the last ten years.

None

List all public offices, if any, for which you have been a candidate in the past ten years.

Name of Office	Elected/Appointed Candidate Only	Year(s) Election Held or Appointment Made	Terms of Service (if applicable)
None			

**Political contributions:** Itemize all political contributions which exceed \$200 or which aggregate to over \$200 in a calendar year to any individual, campaign organization, political party, political action committee or similar entity during the last ten years and identify specific amounts, dates, and names of recipients.

I have used my best efforts to identify all covered political contributions through a review of personal files and publicly available electronic databases. Despite these best efforts, there might be other political contributions that I have been unable to identify.

Recipient	Amount	Date
Mitt Romney for President	\$250	8/15/2012
Thomas Moll for Congress	\$250	9/23/2013
Grant Starrett for Congress	\$250	12/4/2015
Marco Rubio for President	\$250	2/26/2016
Rand Paul for Senate	\$250	5/25/2016
Evan McMullin for President	\$250	10/8/2016

**Qualifications:** State fully your qualifications to serve in the position to which you have been named. (attach sheet)

See Attachment A

**Future Employment relationships:** 1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization

I have no such plans.

3. Has anyone made a commitment to employ you after you leave government service?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

**Potential conflicts of interest:**

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last ten years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

Not applicable

**Tax compliance and bankruptcy:**

1. In the past ten years, have you and your spouse (if applicable) filed and paid all taxes (federal, state, and local) as of the date of your nomination? Indicate if you filed as 'married filing separately.'

Yes

2. In the past ten years, have you been required to make any back tax payments? If so, indicate if you have made any back tax payments and provide full details.

No

3. Has a tax lien or other collection procedure(s) been instituted against you or your spouse (if applicable) by federal, state, or local authorities? If so, provide full details.

No

4. In the past ten years, have you or your spouse (if applicable) ever been the subject of any audit, investigation, or inquiry for federal, state, or local taxes? If so, provide full details.

No

5. Were all your Federal, State, local, and other tax returns and tax liabilities of any kind current (filed and paid when due) as of the date of your nomination? If not, provide details.

Yes

6. Have you ever filed for bankruptcy? If so, provide details.

No

**Civil, criminal and investigatory actions:**

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency (e.g. an Inspector General's office), professional association, disciplinary committee, or other ethics enforcement entity at any time? If so, provide details, regardless of outcome.

No

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

In May 1999, I was cited for unlawful consumption of alcohol (because underage).

3. Have you ever been involved as a party in interest in any administrative agency proceeding, or civil litigation other than a divorce proceeding? If so, provide details.

No

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details.

In May 1999, I pled to a misdemeanor for unlawful consumption of alcohol (because underage).

**Other information:** Please advise the Committee of any additional information, favorable or unfavorable, which you believe should be considered in connection with your nomination.

Not applicable

**Public Records search:** Do you consent to allow Committee staff to conduct a public records search on you using appropriate search tools, including Westlaw, Lexis, etc.?)

Yes

The undersigned certifies that the information contained in the public statement to the Committee is true and correct.

Signed:



Date:

9/26/2022

## Attachment A

### Qualifications

My 15-year legal career in financial services law, regulation, and policy has qualified me to serve as a Member of the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC").

After graduating law school in 2007, I started my legal career as a banking lawyer just as the financial crisis was beginning. I watched as hundreds of billions of taxpayer dollars were spent bailing out "too big to fail" financial institutions, millions of homeowners were wiped out by waves of foreclosures, and almost every American family suffered through the recession and other severe economic fallout that followed. That experience instilled in me an enduring commitment to a financial regulatory system that prevents future financial crises. It also left me with a nascent but growing appreciation for the critical importance of safety and soundness regulation and a credible resolution framework in preventing future crises.

For almost ten years, from 2007 to early 2017, I worked as an attorney in private practice advising banks and other financial institutions on issues under the federal and state banking and consumer financial laws, including the Bank Holding Company Act, the National Bank Act, the Federal Deposit Insurance Act, the International Banking Act, the Dodd-Frank Act, the Truth in Lending Act, the Real Estate Settlement Procedures Act, and the laws governing unfair, deceptive, and abusive acts or practices. This included work helping banks comply with the enhanced prudential standards and other regulatory requirements adopted following the Dodd-Frank Act. It also included leading internal reviews of compliance practices at banks, as well as advice on mergers, acquisitions, and other capital market transactions involving banks and other financial institutions. Through these matters, I became very familiar with the statutes, regulations, and policies of the FDIC and the other federal banking regulators, as well as the financial services marketplace more generally.

Since 2017, my career has focused on government service. As a counsel on the Senate Committee on Banking, Housing, and Urban Affairs, I currently advise the Ranking Member on housing and other issues. At the Federal Housing Finance Agency, I counseled on legal and policy matters relating to the build out of the regulatory framework for Fannie Mae and Freddie Mac (each, a "GSE"). At the Department of the Treasury, I covered GSE matters. Before that, I advised Senator Bob Corker on banking, housing, and other financial services matters.

After almost ten years in banking law and more than five years of government service focused on financial services regulation and policy, I would be honored, and believe that I am qualified, to continue to contribute to the FDIC's ongoing and critical work to prevent future financial crisis.

**PREPARED STATEMENT OF KIMBERLY ANN MCCLAIN**  
 TO BE AN ASSISTANT SECRETARY OF HOUSING AND URBAN DEVELOPMENT  
 NOVEMBER 30, 2022

Chairman Brown, Ranking Member Toomey, and Members of the Committee: Thank you for the opportunity to appear before you today. I would first like to thank President Biden for nominating me to serve as Assistant Secretary for Congressional and Intergovernmental Relations at the U.S. Department of Housing and Urban Development (HUD). I would also like to thank Secretary Fudge for her support of my nomination. Thank you also to this Committee for holding today's hearing and meeting with me over the past few weeks. I look forward to working with this Committee on our Nation's housing issues. If confirmed, you have my pledge that I will bring to bear the same commitment to service and nonpartisanship that has guided my 30-year career in the United States military, private, and public sectors.

For the last 22 months, I have been blessed to serve my fellow Veterans, their caregivers, and their survivors as Deputy Assistant Secretary for Congressional and Legislative Affairs at the U.S. Department of Veterans Affairs (VA). I am proud to support VA's work on access to benefits and care for all Veterans and their families.

I bring to this role a deep knowledge of Government and understand how to work across large organizations, agencies, and Congress to tackle challenges and deliver results. My leadership experience in the nonprofit, private, and public sectors has provided me with the unique background to serve in this role. But just as important, I have seen firsthand the positive impact of access to affordable housing and economic mobility on people's lives.

My childhood was filled with fond memories of going to my paternal grandmother's home on weekends. When my Grandma Freeman could no longer live in her home due to health issues she moved into a subsidized duplex in a Rockford, Illinois, neighborhood called, "The Terrace". That same neighborhood became home to my maternal grandmother after the death of my grandfather. My Grandma Williams transitioned from being a lifelong stay at home mother to a high school and college graduate, and ultimately a librarian. The Terrace provided my grandmothers with a sense of dignity and independence in the midst of major life changes.

Life happens to all of us. And as life is happening, nobody should have to wonder where they will lay their head down at night. I am keenly aware of the struggles that homeowners and renters are facing. I am committed to working with Congress and the constituents it serves. If confirmed, I will do everything within my power to ensure that those who are most in need have an advocate and a voice at HUD.

The Office of Congressional and Intergovernmental Relations serves as an important force multiplier for HUD and a critical conduit for communicating HUD's initiatives, programs, and priorities to Congress, State, and local elected officials, Tribal leaders, and the Senate and House Committees with jurisdiction over HUD. To successfully accomplish HUD's missions, if confirmed, I will focus on three core areas:

- First, ensuring that the Office of Congressional and Intergovernmental Relations is empowered and equipped to be agile and responsive,
- Second, increasing the capacity and continuity of the Office's workforce to deliver exceptional customer service; and finally,
- Developing strong, trusted relationships through consistent communication and engagement.

I am ready to take on the HUD mission and work alongside HUD teammates in service to our Nation. If confirmed, I will lead as I did during my career in public service and as an Air Force officer . . .

Integrity First, Service Before Self, and Excellence in All I Do

Chairman Brown, Ranking Member Toomey, and Members of the Committee, thank you once again for the privilege to appear before you and the opportunity to serve my country.

I look forward to answering your questions.



**Memberships:** List below all memberships and offices held in professional, fraternal, business, scholarly, civic, social, charitable and other organizations.

Organization	Office Held (if any)	Dates of Membership
<b>Truman National Security Project</b>	Defense Fellow	2021 - Pres.
	<ul style="list-style-type: none"> <li>No responsibilities or leadership roles</li> </ul>	
<b>Women in International Security</b>	Member	2020 - Pres.
	<ul style="list-style-type: none"> <li>No responsibilities or leadership roles</li> </ul>	
<b>National Intelligence University Alumni Association</b>	Member	2020 - Pres.
	<ul style="list-style-type: none"> <li>No responsibilities or leadership roles</li> </ul>	
<b>Alpha Kappa Alpha Sorority, Incorporated</b>	Member, Xi Omega Chapter, Washington, DC	2017 – Pres.
	<ul style="list-style-type: none"> <li>No responsibilities or leadership roles</li> <li>Participate in community Service</li> </ul>	
<b>The Links Incorporated</b>	Archivist & Member, Prince Georges County (MD) Chapter, MD	2016 – Pres.
	<ul style="list-style-type: none"> <li>Responsible for leading a committee of 10 members in acquiring and appraising, arranging, and describing chapters records providing reference service, and preserving materials.</li> </ul>	
<b>Jack and Jill of America, Incorporated</b>	Member, Prince Georges County (MD) Chapter, MD	2010 - Pres.
	<ul style="list-style-type: none"> <li>Led a team of 16 elected officers in the management of chapter operations and outreach to the community.</li> <li>Represented the chapter at regional and national meetings, as well as developed and maintained relationships with national, regional, and local strategic partners.</li> </ul>	2016 - 2018
	Chair, Eastern Region Southern Conference, Southern Maryland Chapter of Jack and Jill of America, Inc.	2014 - 2015
	<ul style="list-style-type: none"> <li>Led 27-member team in the planning and execution of 8-hour training day for 750 participants comprised of 28 professional development seminars and 27 onsite vendors.</li> </ul>	
	Chair, Legislative Affairs, Southern Maryland Chapter of Jack and Jill of America, Inc.	2010 - 2016
	<ul style="list-style-type: none"> <li>Led a team of five in the tracking of local and national legislation impacting families in Southern Maryland</li> </ul>	
<b>Employment record:</b>	List below all positions held since graduation from college including the title or description of job, name of employer, location of work, and inclusive dates of employment.	

Deputy Assistant Secretary Office of the Assistant Secretary Congressional and Legislative Affairs (OCLA) Department of Veterans Affairs (VA) Location: Washington, DC	Feb. 2021 – Pres.
Owner Ella Mac Suspended business in 2022 due to busy schedule Location: Maryland	June 2020 – May 2022
Director for Congressional Strategy Office of the Legislative Liaison Department of the Air Force Location: Washington, DC	2019 – 2021
Senior International Cooperation Advisor Counter Threat & International Cooperation, Joint Staff Strategic Plans & Policy (J-5) Office of the Chairman Joint Chiefs of Staff Department of the Air Force (Reserves) Location: Pentagon, Washington, DC	2017 – 2021
Senior Country Director for South America Office of Foreign Policy and Partnerships (J-5) United States Cyber Command Location: Fort Meade, MD	2017 – 2019
Legislative Advisor to the Chief of Staff of the Air Force (interim) Department of the Air Force (Reserves) Location: Pentagon, Washington, DC	Apr – Oct 2017
Director, Defense Senior Leader Development Program Office of the Undersecretary of Defense (P&R) Department of Defense Location: Washington, DC	2016 – 2017
Senior Country Director for Africa and Brazil Deputy Under Secretary Air Force International Affairs Department of the Air Force (Reserves) Location: Pentagon, Washington, DC	2014 – 2017
Defense Fellow Center for Strategic Intelligence Research National Intelligence University Department of the Air Force (Reserves) Location: Defense Intelligence Agency, Washington, DC	2013 – 2014
Policy Advisor, Headquarters Air Force Lessons Learned, Analysis, and Assessment Department of the Air Force (Reserves) Location: Pentagon, Washington, DC	2012 – 2013
Legislative Advisor, Office of the Legislative Liaison Department of the Air Force (Reserves) Location: Pentagon, Washington, DC	2009 – 2012

Adjunct Professor International Studies (online) Northcentral University Location: Prescott Valley, AZ	2010 – 2013
Senior Executive Communications Advisor Accenture Federal Services Location: Washington, DC	2008 - 2013
E-3 AWACS Instructor Senior Air Battle Manager Department of the Air Force (Reserves) Federal: Active-Duty Reserve Technician Location: Oklahoma City, OK	2005 - 2008
Corporate Learning & Development Manager Sonic Restaurant Industries Location: Oklahoma City, OK	2003 - 2005
Customer Relationship Manager Capital One Financial Services Location: Dallas, Texas	1997 - 2003
E-3 AWACS Instructor Senior Air Battle Manager Deputy Chief of Tactics (2006 - 2009) / Chief of Readiness (2003 – 2006) / Chief Aircrew Life Support (2003 – 2006) Department of the Air Force (Reserves) Location: Tinker Air Force Base, OK	2002 – 2009
Executive Officer to Commander, 457 <sup>th</sup> Fighter Squadron, Department of the Air Force Department of the Air Force (Reserves) Location: Naval Air Station Fort Worth, TX	2000 – 2002
Aircrew Instructor, Various, Department of the Air Force Department of the Air Force (Active Duty & Reserves) Location: Dyess, TX	1991– 2000

**Government Experience:** List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other (including part-time) service or positions.

Name of Government Entity	Position	Dates of Service
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**See Above**

**Published writings:** List the titles, publishers and dates of books, articles, reports and other published materials you have written. The list should include any publicly accessible publications on the internet in the past ten years, including appropriate URLs for any posts on blogs you maintained or contributed to, and URLs for any other significant internet-based postings during that same period. If available, provide the Committee with **one digital copy** of each of the writings you list.

**None**

**Speeches and presentations:** List all of the formal speeches and presentations (e.g., PowerPoint) you have delivered during the past ten years which are on topics relevant to the position for which you have been nominated, including dates. If available, provide the Committee with **one digital copy** of each formal speech and presentation. If text is no longer available, list the date, place, and organization or group to whom you made the speech or presentation.

None

**Public statements:** List all public statements you have made during the past ten years which are on topics relevant to the position for which you have been nominated, including dates. Whenever possible, provide the Committee with finding aids (such as citations, internet URLs, etc.) for each statement.

None

**Social media usernames:** Please provide a list of all of your currently active social media usernames (e.g., Facebook, Instagram, Twitter, etc.), and any usernames for any inactive accounts you have used within the previous ten years.

- Facebook- KimMc (URL: kim.mcclain.969)
- Instagram- mcclainkdr
- LinkedIn- Dr Kimberly McClain
- Twitter - @DrKimMcClain
- Pinterest- kft28

**Political affiliations activities:** List memberships and offices held in and services rendered to all political parties or election committees during the last ten years.

List all public offices, if any, for which you have been a candidate in the past ten years.

Name of Office	Elected/Appointed Candidate Only	Year(s) Election Held or Appointment Made	Terms of Service (if applicable)
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N/A - None

**Political contributions:** Itemize all political contributions which exceed \$200 or which aggregate to over \$200 in a calendar year to any individual, campaign organization, political party, political action committee or similar entity during the last ten years and identify specific amounts, dates, and names of recipients.

None

**Qualifications:** State fully your qualifications to serve in the position to which you have been named. (attach sheet)

**Future Employment relationships:** 1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization

None

3. Has anyone made a commitment to employ you after you leave government service?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

**Potential conflicts of interest:** 1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

**In connection with the nomination process, I have consulted with the Office of Government Ethics and HUD's Office of Ethics and Appeals to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of my ethics agreement.**

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

**In connection with the nomination process, I have consulted with the Office of Government Ethics and HUD's Office of Ethics and Appeals to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of my ethics agreement.**

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last ten years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way

constitute or result in a possible conflict of interest with the position to which you have been nominated.

**In connection with the nomination process, I have consulted with the Office of Government Ethics and HUD's Office of Ethics and Appeals to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of my ethics agreement.**

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

**In connection with the nomination process, I have consulted with the Office of Government Ethics and HUD's Office of Ethics and Appeals to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of my ethics agreement.**

**Tax compliance and bankruptcy:**

1. In the past ten years, have you and your spouse (if applicable) filed and paid all taxes (federal, state, and local) as of the date of your nomination? Indicate if you filed as 'married filing separately.'

Yes

2. In the past ten years, have you been required to make any back tax payments? If so, indicate if you have made any back tax payments and provide full details.

No

3. Has a tax lien or other collection procedure(s) been instituted against you or your spouse (if applicable) by federal, state, or local authorities? If so, provide full details.

No

4. In the past ten years, have you or your spouse (if applicable) ever been the subject of any audit, investigation, or inquiry for federal, state, or local taxes? If so, provide full details.

No

5. Were all your Federal, State, local, and other tax returns and tax liabilities of any kind current (filed and paid when due) as of the date of your nomination? If not, provide details.

All of my tax returns and tax liabilities are current with the exception of the taxes for the 2018 and 2019 tax years. My husband and I owed Federal income taxes with our timely filed 2018 and 2019 tax returns, but we were financially unable to pay those taxes in full at the time of filing. We promptly sought and entered into an installment agreement with the IRS, and have been timely making our installment payments under the terms of the agreement.

6. Have you ever filed for bankruptcy? If so, provide details.

No

**Civil, criminal and investigatory actions:**

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency (e.g. an Inspector General's office), professional association, disciplinary committee, or other ethics enforcement entity at any time? If so, provide details, regardless of outcome.

No

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No

3. Have you ever been involved as a party in interest in any administrative agency proceeding, or civil litigation other than a divorce proceeding? If so, provide details.

No

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details.

No

**Other information:** Please advise the Committee of any additional information, favorable or unfavorable, which you believe should be considered in connection with your nomination.

None

**Public records search:**

Do you consent to allow Committee staff to conduct a public records search on you using appropriate search tools? (including Westlaw, Lexis, etc.)

Yes

The undersigned certifies that the information contained in the public statement to the Committee is true and correct.

Signed: Kenny A. Mella Date: 6/29/22

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**1. Where have you excelled in past positions in attracting, hiring, and promoting people of color in positions in your organization/s? Where might there be room for improvement?**

**Response:**

The FDIC has made steady progress enhancing the racial, ethnic, and gender diversity of its workforce, both while I served previously as Vice Chairman and Chairman, and currently as Acting Chairman. For example, the FDIC's Corporate Employee Program (CEP) made progress in diversifying examiner hiring in the period 2005 through 2017, the last full year I served as Chairman. The CEP focused on recruiting examiners, the FDIC's largest occupational group. Since the CEP was established in 2005, Black women were 9.6% of CEP hires, compared with 8.4% of the Civilian Labor Force (CLF).<sup>1</sup> During the same period, Black men were 6.2% of CEP hires, compared with 3.4% of the CLF.

In February 2018, just as my prior tenure as Chairman was coming to a close, I announced positive results from the implementation of the FDIC's 2017 Diversity and Inclusion Strategic Plan, including the fact that our FEVS inclusion score increased to 72 percent, well above the federal government average of 60 percent.<sup>2</sup> The FDIC also ranked in the top five mid-sized agencies in the category of Support for Diversity with a score of 73.6, up from 72.0 in 2016.<sup>3</sup>

Over recent years, the FDIC has made progress toward improving the diversity of its workforce to better reflect the demographics of the CLF. The percentage of women hired into entry-level examiner positions, the agency's largest occupational group, increased to 41 percent. In 2021, minority representation at the executive level increased to 23 percent and minority representation across all management levels increased to 24 percent. Persons with disabilities increased to 13 percent of the workforce, above the 12 percent federal benchmark. Veterans increased to 9 percent of the workforce with veterans representing almost 13 percent of new hires in fiscal year 2021.

Moreover, the agency's workforce who identify as American Indian/Alaska Native, Asian, Black/African American, or Native Hawaiian/Pacific Islander exceeds the CLF. However, the FDIC recognizes there is much more work to be done to achieve a more diverse and inclusive workforce. One area where the FDIC is placing increased emphasis toward improving diversity is with individuals who self-identify as Hispanic. At less than 5 percent,

<sup>1</sup> See FDIC, Section 342 Dodd-Frank Wall Street Reform and Consumer Protection Act 2017 Report to Congress, fig. 10, available at <https://www.fdic.gov/about/diversity/pdf/rtrc32918.pdf>.

<sup>2</sup> See FDIC, Diversity and Inclusion Strategic Plan 2018-2019, Message from the Chairman, available at <https://www.fdic.gov/about/diversity/pdf/2018plan.pdf#page=4>.

<sup>3</sup> See *id.*

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Hispanic representation is well below the CLF percentage of almost 10 percent based on 2010 census data.

In an effort to improve the agency's representation with this part of the workforce, the FDIC established an executive level task force to address challenges for Hispanic recruitment and retention. While the agency is focusing efforts to reach individuals that identify as Hispanic, the FDIC will continue recruiting strategically to reach all available talent in the labor market, providing upward mobility opportunities to current employees, and supporting employee engagement at all levels.

The FDIC remains committed to achieving a diverse and inclusive workforce through a wide variety of methods aimed at recruiting, hiring, retaining, and promoting high-performing individuals who reflect all segments of society.

**2. What specific measures will you use to evaluate the success of the FDIC in understanding and addressing the needs of Black, Indigenous and people of color (BIPOC)? And, will you work with the other board members to keep Congress apprised, as appropriate, on the progress being made on these measures?**

**Response:**

To provide actionable demographic data to senior leadership, the FDIC, in 2013, developed a workforce analytics dashboard on the FDIC workforce by gender and minority status, and by division/office, region, race, ethnicity, occupation, grade level, and employment type (permanent and non-permanent). This analytics dashboard remains in use and allows FDIC senior leaders to support and improve diversity efforts in hiring, promotion, and retention.<sup>4</sup>

The FDIC has worked to engage employees at all levels across the agency in strategic initiatives. The Diversity and Inclusion Executive Advisory Council (EAC), comprised of the FDIC's most senior leaders, meets monthly to discuss DEIA matters. Regional Directors discuss DEIA strategies with regional and field office employees. Each month a representative from an employee resource group meets with the EAC to share perspectives. In addition, I meet regularly with the FDIC employee resource groups.

Currently, the FDIC is in the process of reinstating the Workplace Excellence (WE) Program, which I previously implemented in 2012-2017. The WE Program will again provide a forum where diverse employees across various organizations, geographic locations, and grade levels can share their perspectives on the FDIC work environment and collaborate on workplace improvements. In previous years, the successful launch of this program led to 10 Division/Office WE Councils and actively engaged 75% of all FDIC employees through WE

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<sup>4</sup> See *id.*, 25-26.

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Steering Committee and Council Member outreach and information sharing sessions, and employee engagement activities. The program successfully accomplished over 80 WE Steering Committee and Council projects and initiatives. The previous WE Program coincided with four of the six years that the FDIC was recognized on the *Best Places to Work in the Federal Government*<sup>5</sup> by the Partnership for Public Service.<sup>5</sup> In fact, for six consecutive years during my tenure as Chairman from 2011 – 2016, the FDIC was the Best Place to Work among mid-sized agencies and has continued to be highly ranked in the Federal Employee Viewpoint Survey (FEVS) in subsequent years.

I will continue to keep the FDIC Board, workforce, and Congress apprised of our progress in creating a diverse and inclusive workforce through our analytics dashboard as well as annual reporting and as part of my testimony before the Congress.

**3. What is your plan for creating an inclusive working environment for employees within your office?**

**Response:**

In a global message sent to all FDIC employees shortly after assuming the role of Acting Chairman, I re-emphasized the FDIC’s commitment to the principles of equal employment opportunity and my expectation that all FDIC employees take responsibility for knowing the FDIC’s equal employment policies and cooperate fully in their implementation. I have identified the promotion of DEIA within the FDIC workforce and the broader financial industry as one of our key priorities for 2022, and have established that as one of the seven FDIC Corporate Performance Goals.<sup>6</sup> The FDIC has also disseminated and implemented robust DEIA Strategic Plans at both the corporate and divisional levels and has initiated multiple DEIA initiatives across the agency with input from employees.

Recruitment and hiring diversity initiatives, support for first-generation professionals, and career development programs for the next generation of leaders are among several employee initiatives currently underway and expected to continue into the coming year. I have also maintained recent improvements to the Expressions of Interest (EOI) process that was implemented to improve transparency and accessibility to these opportunities for women and minorities.

My commitment to diversity and inclusion goes beyond merely complying with the letter and spirit of all applicable federal laws and policies concerning Equal Employment Opportunity

<sup>5</sup> Available at <https://bestplacestowork.org/>.

<sup>6</sup> See *FDIC 2022 Annual Performance Plan*, pg. 92, available at <https://www.fdic.gov/about/strategic-plans/performance/index.html>.

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and diversity. Under my leadership, diversity and inclusion have long been an important value for the FDIC and will continue to be key elements of our strategic vision.

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**Crypto**

1. During the hearing on November 15, 2022, Federal Reserve Board (Fed) Vice Chair for Supervision Barr stated that it would be “useful for [the banking agencies] to provide guidance to the banking sector about how to safely custody crypto assets.” In July 2020, however, the Office of the Comptroller of the Currency (OCC) issued guidance stating that national banks may provide custody services for crypto assets.

- Do you agree with Vice Chair Barr?

**Response:**

On April 7, 2022, the FDIC issued Financial Institution Letter FIL-16-2022, Notification of Engaging in Crypto-Related Activities,<sup>7</sup> to address FDIC-supervised institutions’ engagement in crypto asset-related activities. The FDIC requested that all FDIC-supervised institutions that are considering engaging in, or are already engaged in, crypto asset-related activities to notify the FDIC and to provide all necessary information that would allow the FDIC to engage with the institution to assess the safety and soundness, consumer protection, BSA/AML, and financial stability risks and provide supervisory feedback. The FDIC established this case-by-case approach to gain a better understanding of the risks of the specific crypto-asset related activities by FDIC-supervised banks. The FDIC has indicated that as it gains greater experience and understanding of the risks of these activities, it would expect to issue broader guidance with the other federal banking agencies to the banking industry. This may include guidance on custody services for crypto assets.

- Do you agree with the OCC’s analysis? If not, please explain whether you believe banks may provide custody services for crypto assets and whether you believe that providing custody services for crypto assets differs from any other assets for which banks provide safekeeping and custody services.

**Response:**

The OCC’s analysis in Interpretive Letter 1170<sup>8</sup> speaks to the legal permissibility of crypto custody activities for national banks. The FDIC does not deem activities to be permissible or impermissible; that authority lies with the OCC for national institutions and the states for state chartered institutions.

The OCC superseded Interpretive Letter 1170 through its issuance of Interpretive Letter 1179, which clarifies that the activities addressed in Interpretive Letters 1170, 1172, and 1174

<sup>7</sup> Available at <https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html>.

<sup>8</sup> Available at <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-98.html>.

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are legally permissible for a bank to engage in, provided the bank can demonstrate, to the satisfaction of its supervisory office, that it has controls in place to conduct the activity in a safe and sound manner.<sup>9</sup> OCC’s Interpretive Letter 1179 states that, consistent with longstanding OCC precedent, a proposed activity cannot be part of the “business of banking” if the bank lacks the capacity to conduct the activity in a safe and sound manner. OCC’s Interpretive Letter 1179 further states that a bank should notify its supervisory office, in writing, of its intention to engage in any of the activities addressed in the three interpretive letters. OCC further states the bank should not engage in the activities until it receives written notification of the supervisory office’s non-objection. In deciding whether to grant supervisory non-objection, the supervisory office will evaluate the adequacy of the bank’s risk management systems and controls, and risk measurement systems, to enable the bank to engage in the proposed activities in a safe and sound manner.

This practice is substantively similar to the process the FDIC outlined in FIL-16-2022, Notification of Engaging in Crypto-Related Activities. A purpose of the case-by-case review is to evaluate whether the risks of crypto asset-related activities by banks, including custody services, may differ from the risks of other assets.

2. Earlier this year, the Securities and Exchange Commission (SEC) staff issued Staff Accounting Bulletin 121 (SAB 121), which provides that crypto assets held in custody should be treated as on-balance sheet assets. It has been reported that the SEC staff “did not consult with the banking regulators” before issuing SAB 121. This staff guidance is posing significant challenges for crypto custody by banks, which are subject to capital and liquidity requirements based on their balance sheet assets.

- Do you believe that the SEC staff guidance is appropriate? Please explain.

**Response:**

The SEC has primary responsibility for the financial statement reporting requirements of publicly traded organizations in the United States. As SAB 121 applies to all publicly traded organizations, and not solely to regulated banking organizations, the FDIC defers the determination of the appropriateness of this guidance to the SEC.

<sup>9</sup> Available at <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-121.html>.

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- Are you aware of any other assets held in custody that are treated as on-balance sheet assets under U.S. generally accepted accounting principles (GAAP)?

**Response:**

The FDIC is not presently aware of situations that result in assets held in custody being reported as on-balance sheet assets. However, there are situations in which a financial institution's activities associated with custody assets could result in the recognition of an on-balance sheet exposure. For example:

- In accordance with ASC Subtopic 450-20, Contingencies – Loss Contingencies, an estimated loss (or expense) from a loss contingency (for example, pending or threatened litigation) must be accrued by a charge to income if it is probable that a liability has been incurred as of the report date and the amount of the loss can be reasonably estimated.
- In accordance with ASC Topic 460, Guarantees, a liability is recognized by a guarantor at the inception of a guarantee for the obligations the guarantor has undertaken in issuing that guarantee, including contingent guarantees, indirect guarantees and indemnification agreements.
- Have the banking agencies ever allowed regulated banks to depart from GAAP for purposes of bank regulations? If so, please describe those circumstances.

**Response:**

The Federal banking agencies have made adjustments in their regulatory capital rules that introduce differences between the treatment of regulatory capital and what is reported as equity under GAAP. For example, the Federal banking agencies allow banking organizations to transition into regulatory capital over a period of time the impact associated with implementation of the current expected credit losses methodology. In addition, the federal banking agencies' regulatory capital regulations include certain adjustments and deductions associated with intangible assets, goodwill, mortgage servicing assets, certain deferred tax assets, and investments in the capital of unconsolidated financial institutions; however, these adjustments are generally more stringent than GAAP. There are circumstances in which the federal banking agencies' regulatory capital standards allow certain elements of the equity account under GAAP to be adjusted or modified for regulatory capital purposes, usually when the GAAP treatment would create outsized regulatory burden or uncertainty for community banks. For example, most community banks do not include elements of accumulated other comprehensive income in regulatory capital, such as net unrealized gains and losses on available for sale debt securities.

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3. On November 23, 2021, the Fed, the Federal Deposit Insurance Corporation (FDIC), and the OCC issued a statement describing their crypto-asset policy sprint initiative and next steps.<sup>10</sup> The statement noted that, throughout 2022, the agencies plan to provide “greater clarity on whether certain activities related to crypto-assets conducted by banking organizations are legally permissible,” including the issuance and distribution of stablecoins. Although the Fed, FDIC, and OCC have not provided further guidance on bank-issued stablecoins, a recent paper asserts that issuing stablecoins “clearly fall[s] within the existing legal authority of banks to conduct the business of banking.”
- In your view, is it legally permissible for FDIC-regulated banks to issue stablecoins?
  - If not, how do you distinguish stablecoin issuance from deposit-taking activity?

**Response:**

There are numerous types of stablecoins, each with varying and different features and structures. Stablecoins have predominantly been used as a vehicle to buy and sell crypto-assets for investment and trading purposes. Unlike Bitcoin, Ether, and similar crypto-assets, most stablecoins are represented as backed by a pool of assets or utilize other methods to help maintain a stable value. Currently, the most prominent stablecoins are purported to be backed by financial assets such as currencies, U.S. Treasury securities, or commercial paper.

From the FDIC’s perspective, before banks engage in crypto-asset related activities, it is important to ensure that: (a) the activity can be engaged in a safe and sound manner; (b) the bank has put in place appropriate measures and controls to identify and manage the novel risks associated with those activities; and (c) the bank can ensure compliance with all relevant laws, including those related to anti-money laundering/countering the financing of terrorism, and consumer protection; as well as ensuring that the specific activity is permissible under applicable law and regulation.

The FDIC does not deem activities to be permissible or impermissible; that authority lies with the Office of the Comptroller of the Currency for national institutions and the states for state chartered institutions. It should be noted, however, that even activities deemed permissible must be conducted in a safe and sound manner (see e.g., sections 8 and 39 of the Federal Deposit Insurance Act), such that they do not present significant risks to the Deposit Insurance Fund and are consistent with the purposes of Federal deposit insurance and other applicable law. Whether is it legally permissible for FDIC-regulated banks to issue stablecoins will depend upon the specific features of the instrument to be issued, and the facts and circumstances underlying the issuance of the instrument.

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Without knowing the facts and circumstances for a specific stablecoin issuance, it is not possible to assess the similarities or distinguishing characteristics of such an issuance and deposit taking activities.

**Fintech**

4. In recent years, we have seen many partnerships between commercial banks and financial technology companies (fintechs), which has lowered the price of financial products, improved credit options, and expanded consumer choice. Notwithstanding these benefits, Acting Comptroller Michael Hsu previously testified that he has asked OCC staff to "differentiate" between harmful and healthy bank-fintech partnerships.
- Have you instructed FDIC staff to take any similar actions?

**Response:**

No.

- What do you see as the characteristics of a "healthy" bank-fintech partnership?

**Response:**

The extent of FDIC supervision of relationships between banks and third parties, including fintechs, focuses on the bank's role and the adequacy of the bank's risk management program. When FDIC-supervised institutions adopt technology or enter into third-party relationships with financial technology partners, the FDIC focuses on ensuring that safety and soundness and consumer protection standards are met.

- What steps has the FDIC taken over the past 10 months to deepen its knowledge of market innovation and engage with fintech companies to better understand their business models?

**Response:**

The FDIC has been focused on deepening its knowledge of emerging technologies for a number of years. During my previous tenure as Chairman in 2016, the FDIC established an Emerging Technology Steering Committee, which continues to serve as a hub of knowledge for the FDIC and its staff for understanding, assessing, and monitoring emerging technology activities, their risks and trends, as well as evaluating potential impacts of emerging technologies on the banking system, the deposit insurance system, effective regulatory oversight, economic inclusion, and consumer protection, among other things. The FDIC staff have also engaged with a number of fintech companies that provide or intend to provide services to banks.

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- Do you believe that bank-fintech partnerships can provide benefits to consumers, including those traditionally underserved by commercial banks?

**Response:**

Bank-fintech partnerships can provide benefits to bank customers if properly managed. Deciding whether to enter into a relationship with a fintech firm is, appropriately, a business decision of the bank. The FDIC does not endorse nor discourage any particular types of business arrangements, fintech or otherwise, as long as institutions have appropriate controls to manage the risks of any such relationship.

**Community Reinvestment Act**

5. Earlier this year, I sent you a letter calling for greater transparency concerning Community Reinvestment Act (CRA) agreements. I remain concerned that many details of community benefits plans (CBPs), which are developed by banks and community groups in connection with the CRA, are shielded from public scrutiny, in contravention of the statute.
  - As the FDIC works to finalize a rule amending the regulations implementing the CRA, will you commit to establishing a public, searchable database containing all CRA-related agreements in full, including CBPs?
  - As part of any final rule, will you commit to broaden the definition of “covered agreement” under the regulations implementing the CRA to align with congressional intent and mitigate the potential for evasion by bank and community groups?

**Response:**

As the agencies noted in their response to your letter, neither the Community Reinvestment Act (CRA), its implementing regulations, nor the agencies’ joint proposal to strengthen and modernize those regulations<sup>11</sup> require banks to enter into agreements with community groups or other private parties. Further, the agencies do not monitor compliance with or enforce these agreements.<sup>12</sup>

However, section 711 of the Gramm-Leach-Bliley Act (GLBA) imposes disclosure and reporting requirements on insured depository institutions (IDIs), their affiliates, and nongovernmental entities or persons (NGEPs) with respect to “[a]ny agreement by an [IDI] or

<sup>11</sup> Community Reinvestment Act, 87 Fed. Reg. 33884 (proposed June 3, 2022) (to be codified at 12 C.F.R. Part 25, 12 C.F.R. Part 228, and 12 C.F.R. Part 345).

<sup>12</sup> See Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance, Interagency Question and Answer § \_\_.29(b)—2, 81 Fed. Reg. 48506, 48548 (July 25, 2016).

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affiliate with a [NGEP] made pursuant to or in connection with the Community Reinvestment Act of 1977 involving funds or other resources of such [IDI] or affiliate.”<sup>13</sup> The agencies implemented these requirements in their respective regulations, which—consistent with the statutory language—apply to “covered agreements” with an IDI or affiliate and a NGEP as parties.<sup>14</sup>

Under the GLBA implementing regulations, IDIs, their affiliates, and NGEPs are required to make a copy of any covered agreement available upon request and to file an annual report with the appropriate federal banking agency regarding the use of funds or other resources under such agreement for that fiscal year. In addition, IDIs and their affiliates must provide to the supervisory agency each calendar quarter copies of all covered agreements entered into with NGEPs during the quarter or a list of the agreements. To the extent that a CBP meets the definition of a covered agreement, these disclosure and reporting requirements apply to the CBP. In addition, the regulations require the appropriate federal banking agency to make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act and the appropriate federal banking agency’s rules regarding the disclosure of information, including under the Freedom of Information Act, where appropriate.<sup>15</sup>

In implementing the GLBA the agencies sought to balance appropriate transparency with the associated regulatory burden. As the agencies stated in their response to your letter, the agencies appreciate your suggestions to provide additional transparency under the GLBA and are carefully reviewing possible changes to best enhance transparency while minimizing burden. If any amendments to the GLBA regulations were to be proposed, the agencies would seek public comment.

**Regional Bank Resolvability**

6. On October 14, the Fed and the FDIC issued an advance notice of proposed rulemaking (ANPR) on potential new requirements related to the resolvability of regional banks.<sup>16</sup> The proposal appears to be predicated on the assumption that the only realistic resolution option for these banks would be acquisition by a larger institution. However, banks covered by the ANPR have submitted resolution plans that have been reviewed and approved by the Fed and the FDIC for nearly a decade, and these plans do not contemplate wholesale acquisition by a larger bank.

<sup>13</sup> 12 USC 1831y(a).

<sup>14</sup> The agencies’ regulations are set forth at 12 CFR part 35 (OCC), 12 CFR part 207 (Board), and 12 CFR part 346 (FDIC).

<sup>15</sup> See 12 CFR 35.8 (OCC), 12 CFR 207.8 (Board), and 12 CFR 346.8 (FDIC). See also 5 U.S.C. 552 et seq.; 12 CFR part , subpart B (OCC), 12 CFR part 261 (Board), and 12 CFR part 309 (FDIC).

<sup>16</sup> Available at <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20221014a.htm>.

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- If these resolution plans are credible, why do the Fed and the FDIC believe that new requirements are warranted?

**Response:**

In evaluating Title I plans the FRB and FDIC do not endorse or approve any particular strategy, but rather assess whether a plan can be found not “*not* credible.” Such a finding simply means that they have met the particular requirements of the planning process under the parameters specified for that process, not that the resolution plan will succeed in whatever scenario might be encountered in the event of an actual failure. Further, the standard for Title I involves assessing the systemic risk that the failure of a subject firm may pose to U.S. financial stability under the narrow parameters prescribed in the planning process. The failure of an institution may still be highly disruptive, costly, or disorderly even if this standard is met as part of the planning process.

Large banks continue to grow, both through organic growth and through mergers and acquisitions. In addition, most of these banks have increased their reliance on large uninsured deposits to fund their operations over the past decade, with uninsured deposits often exceeding 40 percent of total deposits. The size of large banks, by definition, limits the universe of banks with the capability to acquire them if they fail.

The FDIC would benefit from having other options for the orderly resolution of these large institutions in a way that minimizes the destruction of value, addresses the impact on depositors and local communities, maintains U.S. financial stability, and minimizes the cost to the Deposit Insurance Fund (DIF). Going concern resources at the insured depository institution potentially can improve the FDIC’s options to complete an orderly resolution of a large bank under the Federal Deposit Insurance Act by increasing the likelihood that a transfer to a bridge depository institution to preserve franchise value would be less costly to the DIF and less disruptive to the financial system and local communities than a liquidation of the insured institution and a payout of insured deposits. Accordingly, the FDIC and the Federal Reserve are considering whether additional measures are warranted to increase the optionality for an orderly resolution of a large bank.

- Do you acknowledge that subjecting regional banks to new long-term debt requirements would impose costs that may exceed their benefits?

**Response:**

The ANPR approved by the FDIC and the FRB does not reach a determination about the costs and benefits of any particular approach, but rather explains that “the agencies are

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considering whether additional measures are warranted" to address the failure of large banks, including a loss-absorbing capacity requirement, and "the potential costs of such a requirement." The ANPR seeks public input on these matters to support an evaluation of the costs and benefits of such a requirement.

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**Questions 1 and 2**

Acting Director Gruenberg, Mr. Travis Hill, and Mr. Jonathan McKernan:

Affordable access to capital and financial inclusion is crucial for entrepreneurs and small businesses to succeed in starting and growing their businesses. However, many entrepreneurs and small firms, especially women, minorities, and those living in rural areas, struggle to access traditional banking services.

Bank-fintech partnerships have allowed banks to reach these underrepresented population segments and increase customer engagement. Furthermore, to encourage consumer-beneficial innovation, regulators should support innovations in consumer credit underwriting designed to increase credit visibility, reduce bias, and expand credit to underserved consumers.

A number of financial technology firms are on the cutting edge of financial innovation by using alternative data technology, automated credit underwriting, artificial intelligence, and more to achieve increased financial inclusion and expanded access to affordable credit for creditworthy businesses and entrepreneurs.

Please answer the following with specificity:

1. *Do you believe regulators should support and encourage responsible bank-fintech partnerships as they work to implement new technologies that increase financial inclusion and access to credit?*

**Response:**

The role of technology in the operation of financial institutions has been and will continue to be of critical importance. When FDIC supervised institutions adopt technology or enter into third-party relationships with financial technology partners, the FDIC focuses on ensuring that safety and soundness and consumer protection standards are maintained, which are key pillars of the FDIC's mission. Deciding whether to enter into a relationship with a fintech firm is, appropriately, a business decision of the bank. The FDIC does not endorse nor discourage any particular types of business arrangements, fintech or otherwise, as long as institutions have appropriate controls to manage the risks of any such relationship. Therefore, it is critical, as with any business decision, to understand, analyze, and manage associated risks.

In 2008, the FDIC issued Guidance on Managing Third-Party Risk<sup>17</sup> to guide supervised institutions on developing frameworks to manage third-party relationships, which would include

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<sup>17</sup> See FDIC Financial Institution Letter-44-2008 (June 8, 2008), available at <https://www.fdic.gov/news/financial-institution-letters/2008/fil08044.html>.

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fintech relationships, in a safe and sound manner and in compliance with laws and regulations, including those related to consumer protection. During my previous tenure as Chairman in 2016, the FDIC established an Emerging Technology Steering Committee which continues to serve as a hub of knowledge for the FDIC and its staff for understanding, assessing, and monitoring emerging technology activities, their risks and trends, as well as evaluating potential impacts of emerging technologies on the banking system, the deposit insurance system, effective regulatory oversight, economic inclusion, and consumer protection, among other things. More recently, the FDIC, Federal Reserve, and Office of the Comptroller of the Currency, issued Proposed Interagency Guidance on Third-Party Relationships: Risk Management.<sup>18</sup> The agencies continue to work collaboratively on this proposed guidance and are considering how best to provide additional clarity to the industry in this area.

2. *As you review the bank-fintech partnership model, how will you minimize unnecessary regulatory hurdles and ensure that any regulatory actions encourage rather than stifle financial innovation and is commensurate with the actual risk the partnership poses?*

**Response:**

With my support, FDIC staff continue deliberations on proposed interagency guidance on third party risk management and are working collaboratively with staff from the Federal Reserve and Office of the Comptroller of the Currency to consider how best to provide additional clarity to the industry for establishing and maintaining third-party relationships, including those with fintech firms.<sup>19</sup> This would include providing additional clarity around risk-based implementation of governance and management principles, with the understanding that not all relationships present the same level of risk, and therefore not all relationships require the same level or type of oversight or risk management. Successful risk management and consumer protection are paramount to the success of a bank’s business operations, including those involving fintech relationships.

**Questions 3 and 4**

Acting Director Gruenberg, Mr. Travis Hill, and Mr. Jonathan McKernan:

One of my biggest priorities is reducing the number of unbanked and underserved households in this country and getting more Americans into the traditional banking system.

<sup>18</sup> See FDIC Financial Institution Letter-50-2021 (July 13, 2021), available at <https://www.fdic.gov/news/financial-institution-letters/2021/fil21050.html>

<sup>19</sup> See FDIC Financial Institution Letter-44-2008 (June 8, 2008), available at <https://www.fdic.gov/news/financial-institution-letters/2008/fil08044.html>

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According to a 2021 FDIC survey, nearly six million U.S. households were unbanked. We can, and we must, do more to expand opportunities for these individuals to interact with the financial mainstream.

3. *If confirmed, what are your plans to get more of the unbanked and underserved populations into the more traditional, regulated banking system?*

**Response:**

I am strongly committed to expanding access to the mainstream banking system for unbanked and underserved households. Since beginning my tenure as Acting Chairman, I have supported the development of a number of initiatives aimed at this goal, including:

**Support the development of a public awareness campaign, called #GetBanked<sup>20</sup> that increases public knowledge of the FDIC, deposit insurance, financial education resources, and the benefits of a bank account.**

- Promote the advertising campaign through financial education and account access outreach activities and materials.
- Identify opportunities to enhance the Money Smart<sup>21</sup> and #GetBanked webpages respectively.

**Encourage banks to consider the opportunity to offer sustainable and affordable transaction accounts (such as a Bank On certified account)<sup>22</sup>.**

- Collaborate with bank trade associations to expand awareness of certified account standards and maintain resources on the FDIC Banker Resource Center's web page.
- Engage with bank trade associations and core service providers to identify barriers and obstacles to community bank offering certified accounts.
- Develop and promote materials for banks regarding how to engage with unbanked audiences effectively to promote the bank's certified Bank On accounts.

<sup>20</sup> For information on #GetBanked, see <https://www.fdic.gov/getbanked/>.

<sup>21</sup> Money Smart: <https://www.fdic.gov/resources/consumers/money-smart/index.html>.

The FDIC's Money Smart financial education program can help people of all ages enhance their financial skills and create positive banking relationships. First released in 2001 and regularly updated since then, Money Smart has a long track record of success.

<sup>22</sup> For information on the Bank On program, see: <https://joinbankon.org/certify/>.

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**Leverage “bankable moments” that may serve as the catalyst for unbanked households to start a banking relationship.**

- Identify opportunities to partner with government agencies to embed account access and #GetBanked messages into communications about government programs and payments.
- Utilize the knowledge and information of national partners (e.g., government agencies, national community organizations, and trade associations) to identify barriers and challenges to account access and collectively promote the use of affordable and sustainable accounts to LMI, minority and young households through #GetBanked.
- Leverage Money Smart, national and local relationships, networks, and coalitions (e.g. school districts, youth workforce centers, peer educators, Operation Hope, etc.) to connect unbanked minority students with local financial institutions and learning opportunities through Money Smart (e.g. Money Smart for Young People, and Money Smart’s Guide to Organizing Reality Fairs).
- Develop and implement a strategy to introduce new Federal employees to #GetBanked resources and messaging to receive salaries and wages via direct deposit into a bank account.

**Re-establish “Starting Early for Financial Success” to expand banking accounts among unbanked and underbanked young people.**

- Release the refreshed Money Smart for Young Adults curriculum by Q1 2023 to serve as a tool and resource, and leverage other existing resources such as *How Money Smart Are You?* and Money Smart for Young People.
  - Conduct two Reality Fairs using the new Money Smart Guide to Organizing Reality Fairs with the Youth Banking Network (YBN) by Q3 2023. Make note of promising approaches and strategies, document how the organizations implement the toolkit and share widely via webinars and videos.
  - Identify and engage banks in the YBN that offer Bank On certified accounts.
4. *Will you commit to effectively engaging with innovative banks and fintech companies to properly understand and oversee innovations in financial services – especially those that may help usher Americans stuck on the sidelines into the financial mainstream?*

**Response:**

The FDIC is committed to ongoing engagement with banks, state and local governments, non-profit groups, and other stakeholders to search for effective and innovative ways to bring more underserved American into the mainstream banking system. For example, during the early days of the COVID-19 pandemic, the FDIC teamed up with the Internal Revenue Service, the

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American Bankers Association, the Independent Community Bankers Association, and Bank On to encourage and enable unbanked individuals to connect with banks that offer open Bank On certified accounts (electronic transaction accounts with low fees and low minimum balance requirements) so that they could receive their Economic Impact Payments more quickly and securely. I am committed to continuing these sorts of efforts to expand access to the insured banking system.

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1. On a document dated December 9, 2021, you issued a Request for Public Comment<sup>23</sup> on the Bank Merger Act, in coordination with the Consumer Financial Protection Bureau (CFPB) Director Chopra. As you well know, this document – alleging to initiate rulemaking changes at the FDIC – was posted to the CFPB website against the wishes of the FDIC Chair.
  - a. **Provide the names, positions, and agency affiliations of all individuals involved in the production of this document. In doing so, also provide a summary of the activities in the document production process each staff member participated in (i.e. whether the staffer helped draft the document, made technical edits, assisted in publishing the document on the CFPB website, etc.).**

**Response:**

As the internal member of the FDIC Board, I developed the draft proposal for a Request for Information on the Bank Merger Act review process. I requested and received drafting assistance from FDIC staff. The FDIC staff that provided assistance were Kymberly Copa, who at the time was Deputy to then-Director Gruenberg, and Bobby Bean, Deputy Director in the FDIC’s Division of Risk Management Supervision.

The draft proposal was shared with Acting Comptroller Hsu, Director Chopra, and their Deputies, Steven Key, Senior Advisor to the Acting Comptroller, and Gregory Gelzinis, Advisor to the Director, for their review and comment. After receiving comment, I prepared a revised draft of the proposal with assistance from the same FDIC employees. A revised draft was then shared with Chairman McWilliams for comment.

2. The FDIC’s August 18 Financial Institution Letter (FIL)<sup>24</sup> states that charging another NSF fee when a merchant re-presents a transaction for payment and there are insufficient funds in a consumer’s account may be “deceptive” or “unfair” under section 5 of the FTC Act (the UDAP provision). The FIL indicates that even if a bank has clearly disclosed the circumstances that may lead to multiple NSF fees, such fees may be “unfair.” To cite a practice as being “unfair,” it must not be “reasonably avoidable by consumers.”

In this case, consumers *can* avoid being charged multiple NSF fees — they can manage their spending so that they do not overdraw their accounts, and, if they do overdraw their accounts, banks notify their customers whenever an NSF fee is assessed and give customers multiple options to check account balances through online banking and text alerts.

<sup>23</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_bank-merger-act-rfi\\_joint-statement\\_2021-12.pdf](https://files.consumerfinance.gov/f/documents/cfpb_bank-merger-act-rfi_joint-statement_2021-12.pdf)

<sup>24</sup> Available at <https://www.fdic.gov/news/financial-institution-letters/2022/fil22040a.pdf>.

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- a. **Is it correct that consumers *can* avoid incurring multiple NSF fees by keeping track of their spending, and replenishing their accounts when they receive notice from their bank of the first NSF fee?**
  
3. The FDIC does not have rule-writing authority under UDAP. Yet the FIL is very prescriptive — it directs banks to “self-identify and fully correct prior to the start” of the bank’s next compliance exam, and it lists out specific action steps that the FDIC suggests banks take to correct their NSF fee practices. The FIL notes that fines may be imposed if banks do not identify and “correct” multiple representation fees.
  - a. **Given these facts, does the FIL essentially qualify as a rule?**
  
4. You have cited banks for “deception” under UDAP<sup>25</sup> for allegedly unclear disclosures about when the consumer will be charged NSF fees. Yet these same disclosure requirements have been in place for years, and the FDIC never cited a bank for deception until 2021.
  - a. **Can you name an instance of a bank being cited for deceptive NSF fee disclosures prior to 2021?**

**Response to Questions 2, 3 and 4:**

As you may know, FDIC consumer compliance examinations are risk-focused<sup>26</sup> and do not fully review all aspects of a financial institution’s practices at each examination. Beginning in 2020, several FDIC supervised institutions were subject to class action litigation related to the representation issue where consumer harm was identified. Consequently, when higher consumer harm risk was identified, the issue was reviewed during regularly scheduled consumer compliance examinations.

To proactively provide supervised institutions and the public with information and observations related to the FDIC’s consumer compliance supervision activities, the FDIC regularly publishes *Consumer Compliance Supervisory Highlights*, which include high-level overviews of consumer compliance issues identified through the FDIC’s supervision of state non-member banks and thrifts. The Spring 2022 issue of *Consumer Compliance Supervisory Highlights*,<sup>27</sup> published in March 2022, included an article, based on supervisory findings from

<sup>25</sup> <https://www.fdic.gov/news/press-releases/2021/pr21042.html>

<sup>26</sup> FDIC Compliance Examination Manual, pg. II – 1.1 (Overview of Compliance Examinations) – “Risk-focusing involves using information gathered about a financial institution to direct FDIC examiner resources to those operational areas where compliance errors present the greatest potential risks of having a negative impact on bank customers, resulting in consumer harm...”

<sup>27</sup> Available at <https://www.fdic.gov/regulations/examinations/consumer-compliance-supervisory-highlights/documents/ccs-highlights-march2022.pdf>.

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2021, discussing how disclosure and fee practices for re-presentments may result in heightened risk of violations of Section 5 of the Federal Trade Commission Act (“Section 5”). In August 2022, the FDIC issued Supervisory Guidance on Multiple Re-Presentation NSF Fees (“Supervisory Guidance”) to FDIC-supervised institutions to address certain consumer compliance risks associated with assessing multiple NSF fees arising from the re-presentation of the same unpaid transaction and to share the FDIC’s supervisory approach when a violation of law is identified, as well as expectations for full corrective action.<sup>28</sup>

Violations cited by the FDIC related to banks’ assessing multiple NSF fees arising from the re-presentation of the same unpaid transaction are based on the application of longstanding and well-established standards under Section 5 for determining whether a practice is “deceptive.” Financial institutions are required to disclose their fees in a manner that avoids deceiving their customers about how fees may be incurred. This is not a new requirement, and the FDIC has not prescribed a particular form or manner that financial institutions must use in the disclosure of their account fees.

FDIC examiners have identified instances where financial institution disclosures were either silent or vague on the possibility of customers incurring multiple NSF fees if a check or ACH transaction is presented multiple times. In those cases, examiners have cited violations of law, as these practices have been determined to meet the standard as a “deceptive” practice under Section 5. Without advance notice of a financial institution’s practice, customers may have difficulty avoiding multiple NSF fees or may not have sufficient information to understand fees that may be charged as part of a financial institution’s account services.

Many financial institutions have revised their practices by reversing or refunding NSF fees charged after the initial presentment of the item, or not charging NSF fees if they are not confident they can identify re-presented transactions. Financial institutions have also amended their disclosures, and provided updated disclosures to all new and existing customers, so as to let them know that in the future NSF fees would be charged for subsequent re-presentments.

Your question also makes reference to the potential for these practices to be “unfair” under Section 5 of the FTC Act. While the FDIC has not reached such a conclusion and has not cited this practice as unfair, the FDIC has identified risks that charging multiple NSF fees for re-presented transactions could be determined to be unfair, depending on the specific facts and circumstances. For instance, if a bank were to charge a NSF fee for a re-presented transaction prior to the consumer’s receiving any notice of the NSF fee for the initial transaction, then it may be difficult for a consumer to avoid the subsequent NSF fees.

5. During your previous tenure as Chairman of the FDIC, the agency was part of an effort to use their authority to pressure banks to cease their business relationship with certain types of

<sup>28</sup> Available at <https://www.fdic.gov/news/financial-institution-letters/2022/fil22040.html>.

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legal businesses that may be politically disfavored by certain activists or groups, a practice widely known as known as "Operation Chokepoint."

In congressional testimony in 2015, you noted various actions FDIC took to address the abuses under this misguided program. Specifically, your testimony stated "the FDIC will not criticize, discourage or prohibit banks that have appropriate controls in place from doing business with customers who are operating consistent with federal and state law." Furthermore, the FDIC ultimately reached a legal settlement with a group of affected businesses and a letter from the Deputy General Counsel stated that "regulatory threats, undue pressure, coercion, and intimidation designed to restrict access to financial services for lawful businesses have not place at the FDIC."

- a. **Do you still agree with these sentiments and policies expressed your 2015 Congressional testimony?**
- b. **Can you confirm there are no efforts to reimplement any activity similar to Operation Choke Point?**
- c. **Do you commit that if this type of abusive activity were discovered, all individuals involved, including you as Chairman, would be held accountable in accordance with applicable FDIC rules and regulations?**

**Response:**

The answer to all three questions is yes. The FDIC's position remains unchanged from my testimony in 2015 and the policy statement established that same year while I was Chairman. Institutions are encouraged to "take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers."<sup>29</sup> Institutions that can "properly manage customer relationships and effectively mitigate risks are neither prohibited nor discouraged from providing services to any category of customer accounts or individual customer operating in compliance with applicable state and federal law."<sup>30</sup>

The FDIC also issued a public statement on May 22, 2019, in which it confirmed that "[t]he FDIC encourages insured depository institutions to serve their communities, and it recognizes the importance of the services they provide. ... Accordingly, the FDIC encourages institutions to take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers without regard to the risks presented by an individual customer or the financial institution's ability to manage the

<sup>29</sup> "Statement on Providing Banking Services," FIL-05-2015, January 28, 2015, available at <https://www.fdic.gov/news/news/financial/2015/fil15005.htm>.

<sup>30</sup> *Id.*

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risk.”<sup>31</sup> Shortly after beginning my tenure as Acting Chairman, the FDIC again reiterated that policy in issuing a joint statement to remind banks of the risk-based approach to assessing customer relationships and conducting customer due diligence (CDD).<sup>32</sup> The agencies stated that, “Banks that operate in compliance with applicable Bank Secrecy Act/anti-money laundering (BSA/AML) legal and regulatory requirements, and effectively manage and mitigate risks related to the unique characteristics of customer relationships, are neither prohibited nor discouraged from providing banking services to customers of any specific class or type.”

Furthermore, under my previous leadership as Chairman, the FDIC took a number of measures to safeguard against the type of conduct that you describe and ensure that agency’s actions remain beyond reproach, including:

- removing the high-risk merchant list<sup>33</sup> created in 2011;
- encouraging institutions<sup>34</sup> to take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers;
- clarifying<sup>35</sup> that financial institutions that can properly manage customer relationships and effectively mitigate risks are neither prohibited nor discouraged from providing services to any category of customer accounts or individual customer operating in compliance with applicable state and federal law;
- putting safeguards in place to ensure proper examiner conduct, including requiring examiners to put all recommendations in writing, to obtain approval from a Regional Director in consultation with counsel, and to articulate a supervisory basis, beyond reputational risk, for the recommendation to terminate an account,<sup>36</sup> and
- providing clear guidance to our examiners as to the form of discussions that examiners may have with bank management when seeking to address and mitigate weaknesses in a

<sup>31</sup> “Statement of the Federal Deposit Insurance Corporation,” May 22, 2019, available at <https://www.fdic.gov/news/news/press/2019/pr19040a.pdf>.

<sup>32</sup> “Joint Statement on the Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence,” FIL-28-2022, July 6, 2022, available at <https://www.fdic.gov/news/financial-institution-letters/2022/fil22028.html>.

<sup>33</sup> “FDIC Clarifying Official Guidance and Other Information Related to Third-Party Payment Processors,” FIL 41-2014, July 28, 2014, available at <https://www.fdic.gov/news/news/financial/2014/fil14041.html>.

<sup>34</sup> FIL-5-2015 and FIL-28-2022.

<sup>35</sup> *Id.*

<sup>36</sup> Regional Director (RD) Memo 2015-1, “Requirements for Account Terminations”; RD Memo 2016-17, “Communicating and Coordinating with Institution Management in Carrying Out Forward-Looking, Risk-Based Supervision; Statement of FDIC Board of Directors on the Development and Communication of Supervisory Recommendations,” July 29, 2016, available at <https://www.fdic.gov/about/governance/recommendations.html>; “Corrective Action Closure Memo Regarding OIG’s Review of Recommendation 1 from the Operation Choke Point Audit Report” (Report No. AUD-15-008), July 5, 2017, available at <https://www.fdic.gov/sites/default/files/publications/15-008AUD.pdf>; RD Memo 2017-12, “Supervisory Recommendations, Including Matters Requiring Board Attention.”

**Questions for the Record from Senator Tillis for  
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bank’s risk management practices or operating conditions, to address concerns about the use of moral suasion.<sup>37</sup>

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<sup>37</sup> RD Memo 2015-5, “Anticipatory Supervision Language Changes in Outstanding Guidance.”

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**In February 2022, the FDIC's Chief Innovation Officer quit the agency and publicly said that, "[t]he federal bureaucracy is both hesitant and hostile to technological change." This is truly alarming. Keeping pace with technological innovations in the financial space is not only vital for consumers but also for U.S. competitiveness.**

**If confirmed as Chairman, would you commit to reviving this office and pushing the FDIC forward, through TechSprints, sandboxes and other mechanisms to ensure the U.S. doesn't fall further behind?**

**Response:**

The FDIC's Office of Innovation, also known as FDITECH, remains an important part of the agency's effort to promote and adopt key technologies that will enable the agency to keep pace with developments within the banking industry. To better integrate the office with the agency's overall technology framework, it was incorporated under the purview of the Chief Information Officer Organization as a Branch within the Division of Information Technology. The mission of FDITECH is to promote creative thinking, the exploration of new ideas, new ways of accomplishing agency goals, and hands-on experimentation with technologies that have the potential to significantly advance the FDIC's mission. Under the leadership of the Chief Innovation Officer, who was selected to the position following the departure of the previous Chief Innovation Officer, FDITECH helps the agency consider new solutions to long-standing challenges that need to be addressed today, while providing thought leadership on the future.

FDITECH is actively involved in expanding the use of artificial intelligence and machine learning to support FDIC's supervision mission. In 2023, they will be experimenting with Distributed Ledger Technology (DLT) to enable FDIC examiners and others to learn about the technology hands-on to help them assess risk if they encounter it at a regulated institution. They will also explore DLT use cases to improve the ease, speed, and security of data sharing between regulated banks and the FDIC.

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- 1. Bank consolidation has run rampant over the past several decades, and I believe it may be harming rural and underserved communities in Georgia, where physical bank branches are closing at an alarming rate. What are the current regulatory gaps within the Community Reinvestment Act that contribute to these branch closures?**

**Response:**

All FDIC supervised institutions are subject to the Community Reinvestment Act (CRA) and are, therefore, required to serve their communities, generally defined in the CRA regulation as an "Assessment Area" (AA) – which includes the geographies where the bank has its main office, branches, and deposit-taking ATMs. Earlier this year, the FDIC, the Federal Reserve Board, and the Office of the Comptroller of the Currency (OCC) issued a proposed rule that would update the regulations implementing CRA.<sup>38</sup>

The proposal would provide new incentives for banks to serve rural communities in a number of ways. For example, the concept of AAs would be expanded beyond the location of physical "brick-and-mortar" branches in the proposed rule to include non-metropolitan areas where a bank does above a certain threshold of business. This will subject these banks to an evaluation of their lending in these areas. The proposal also provides consideration to community development activities in rural areas that have struggled to receive investment. It provides an incentive for banks to provide community development financing in underserved areas, including rural areas, even if it is outside of their existing branch area of service. The proposed rule also clarifies eligible CRA activities focused on LMI communities and specified rural communities.

The proposed rule provides CRA consideration for banks that maintain or open a branch where there are few or no branches. The rule proposes methods for branch access that are tailored to recognize that reasonable access is different in rural areas than in urban areas.

The proposed rule provides that *all* bank assessment areas will be reviewed and assigned a performance conclusion. This will ensure that bank performance in rural markets are evaluated and considered as part of the ratings process.

- 2. How are branch closures affecting rural access to banking services? Please provide any data you have on the impact these closures are having on local economies.**

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<sup>38</sup> Joint Press Release of the FDIC, OCC and Federal Reserve on the Proposal to Strengthen and Modernize CRA Regulations (May 5, 2022), available at <https://www.fdic.gov/news/press-releases/2022/pr22039.html>.

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**Response:**

Branch access for customers remains an important area of consideration in the FDIC’s research. In the 2021 FDIC National Survey of Unbanked and Underbanked Households, 15.4 percent of unbanked households’ reasons for not having a bank account were attributed to branch locations being inconvenient.<sup>39</sup> The survey also noted that, while the primary method of bank account access is now through mobile banking, certain groups, such as elderly, low-income, and less-educated households still make significant use of bank branches. Moreover, more than 60 percent of all banked households used a bank branch in the past twelve months. Nonetheless, according to the 2021 Summary of Deposits Highlights-FDIC,<sup>40</sup> the number of branches of FDIC-insured depository institutions continued to decline across all census categories—metropolitan, micropolitan, and rural areas—with closures of non-community bank branches occurring at a rate higher than closures of community bank branches.

**3. Have these branch closures altered your approach, specifically within the public interest piece of the Bank Mergers Act, as to when the FDIC considers ongoing or future merger applications?**

**Response:**

The FDIC has always considered branch closures and the impact as a part of the “Convenience and Needs of the Community to be Served” statutory factor under the Bank Merger Act.<sup>41</sup> The Interagency Bank Merger Application<sup>42</sup> requires applicants to disclose existing branches that will be closed as a result of the proposal to the extent the information is available and indicate the effect on the branch customers served.

The Bank Merger Act also affords members of the public an opportunity to submit comments that may address a number of areas, which can be either supportive or critical of the filing, and may protest the filing on the basis of, for example, CRA considerations or convenience and needs of the community to be served. The FDIC continues to review and address the content of public comments and considers the content and the impact on the application processing, including comments related to branch closures.

The FDIC, in conjunction with the other banking agencies and the Department of Justice, is currently undertaking a review of the Bank Merger Act, and one of the areas for review

<sup>39</sup> The survey is available at <https://www.fdic.gov/analysis/household-survey/index.html>.

<sup>40</sup> For information on the summary of deposits, see <https://www.fdic.gov/analysis/household-survey/index.html>.

<sup>41</sup> The Bank Merger Act is Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C.1828(c)).

<sup>42</sup> Available at <https://www.fdic.gov/formsdocuments/f6220-01.pdf>.

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includes the community impact of bank branch closures in the consideration of bank merger applications.

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*Community Banks*

- 1. What more can the FDIC, or Congress, do to make sure that community banks can serve Main Street businesses, workers, and families in their communities?**

**Response:**

As the primary federal regulator of the majority of community banks, the FDIC is uniquely positioned to understand the vital role of these institutions in the functioning of the U.S. financial system and the broader economy, from lending to small business owners and farmers, to providing critical banking services in small towns and rural communities across the nation.

In 2009, the FDIC established an Advisory Committee on Community Banking made up of community bankers from across the country, to provide the agency with advice and guidance on a broad range of policy issues impacting community banks. The Committee has provided valuable input on examination policies and procedures, lending practices, deposit insurance assessments, insurance coverage issues, regulatory compliance matters, and obstacles to the continued growth and ability to extend financial services in their local markets.

The purpose of the FDIC's supervision program is to ensure that banks serve their communities by operating in a safe and sound manner, treating consumers fairly, and complying with banking laws, consumer protection laws, and regulations. The FDIC tailors its regulatory and supervisory approach to consider the size, complexity, business model and risk profile of the institutions it oversees by conducting risk-focused, forward-looking risk management, compliance and Community Reinvestment Act examinations.

The FDIC also uses a tailored approach to supervisory policies through principles-based guidance that calibrates expectations to each organization's size, complexity, business model and risk profile, and through tiered regulations. The agency provides important support for these institutions by monitoring industry trends and providing technical assistance to community banks in a variety of ways, including: training videos; compliance guides and workshops. The FDIC also sponsors Directors Colleges that address topics of interest to community bankers directors and officers such as Asset/Liability Management, Information Technology/Cybersecurity, and Bank Secrecy Act/Anti-Money Laundering/Countering the Financing of Terrorism.

Additionally, the FDIC recognizes the importance of *de novo* bank formation and welcomes applications for deposit insurance. The entry of new institutions helps preserve the vitality of the community banking sector, fills important gaps in all banking markets, including rural communities, and provides credit services to communities that may be overlooked by other financial institutions. To facilitate *de novo* formation, in December 2019, the FDIC published *Applying for Deposit Insurance: A Handbook for Organizers of De Novo Institution* that

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provides an overview of the various requirements and considerations involved in the application process. FDIC staff also work closely with groups interested in organizing a *de novo* community bank to assist them in meeting the application requirements.

**2. How will you ensure that the financial institutions you regulate continue to serve rural and frontier communities? And that there is access in Indian Country?**

**Response:**

All FDIC supervised institutions are subject to the Community Reinvestment Act (CRA) and are, therefore, required to serve their communities, generally defined in the CRA regulation as an “Assessment Area” (AA) – currently defined as a geographic area surrounding the bank’s branches. Earlier this year, the FDIC, the Federal Reserve Board (Federal Reserve), and the Office of the Comptroller of the Currency (OCC) issued a proposed rule that would update the regulations implementing the CRA.<sup>43</sup>

The proposal would provide new incentives for banks to serve rural and frontier communities, as well as Indian Country, in a number of ways. For example, the concept of AAs would be expanded beyond the location of physical “brick-and-mortar” branches in the proposed rule to include non-metropolitan areas where a bank does above a certain threshold of business. The proposal also provides consideration to community development activities in rural areas that have struggled to receive investment. It provides an incentive for banks to provide community development financing in underserved areas, including rural areas, even if it is outside of their existing branch area of service. The proposed rule also clarifies eligible CRA activities focused on LMI communities and specified rural communities.

The proposed rule provides CRA consideration for banks that maintain or open a branch where there are few or no branches. The rule also proposes methods for branch access that are tailored to recognize that reasonable access is different in rural areas than in urban areas.

The proposed rule provides that all bank assessment areas will be reviewed and assigned a performance conclusion. This will ensure that bank performance in rural markets are evaluated and considered as part of the ratings process.

The proposal would also clarify and broaden eligible community development activities to encourage bank engagement in Native Land Areas by including a separate Native Land Areas

<sup>43</sup> Joint Press Release of the FDIC, OCC and Federal Reserve on the Proposal to Strengthen and Modernize CRA Regulations, (May 5, 2022) available at <https://www.fdic.gov/news/press-releases/2022/pr22039.html>.

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definition. Community development activities, such as essential community facilities, essential community infrastructure, disaster preparedness and climate resiliency activities would count wherever they are done within in these areas, as long as they benefit the Native Land Areas and include low- and moderate-income residents.

**3. Is there more that should be done legislatively or through regulation to address branch closures?**

**Response:**

Section 42 of the Federal Deposit Insurance Act<sup>44</sup> sets forth the requirements for branch closures. Among the requirements, a bank must notify its regulatory agency of its intent to close a branch while providing reasons and data supporting the decision. A bank must also notify customers affected by the branch closure. If public comments indicate that a branch closure would adversely affect the community, the FDIC will, if appropriate, convene a meeting with relevant stakeholders to review the concerns and discuss options.

While regulatory agencies do not have the authority to prevent an institution from closing a branch, the closing of branches are considered as a part of the bank’s CRA Performance Evaluation and when evaluating merger applications as a part of the Convenience and Needs of the Community to be Served statutory factor.

Branch access for customers remains an important area of consideration in the FDIC’s research. In the 2021 FDIC National Survey of Unbanked and Underbanked Households, 15.4 percent of unbanked households’ reasons for not having a bank account were attributed to branch locations being inconvenient. The survey also noted that, while the primary method of bank account access is now through mobile banking, certain groups, such as elderly, low-income, and less-educated households still make significant use of bank branches. Moreover, more than 60 percent of all banked households used a bank branch in the past twelve months. Nonetheless, according to the 2021 Summary of Deposits Highlights-FDIC, the number of branches of FDIC-insured depository institutions continued to decline across all census categories—metropolitan, micropolitan, and rural areas—with closures of non-community bank branches occurring at a rate higher than closures of community bank branches.

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<sup>44</sup> The cited provision is available at <https://www.fdic.gov/regulations/laws/rules/1000-4400.html#fdic1000sec.42>.

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**4. What do you see as the most pressing challenges for banks, especially community banks, in the coming years?**

**Response:**

Managing credit risk and interest rate risk in the current economic environment, which is marked by historic levels of inflation, will challenge all banks in the near term, including community banks. Community banks will also continue to face challenges in being able to keep up with technology and staying relevant in a world that is increasingly becoming digitized. Cybersecurity risks remain an ever-present challenge. Additionally, community banks, particularly those in rural communities, continue to experience succession management challenges in attracting and maintaining talent to operate the banks in the future.

**5. Generally, what is your view and approach to the regulatory responsibilities of members of the Federal Deposit Insurance Corporation Board?**

**Response:**

The FDIC has the responsibility of promoting financial stability by insuring deposits in all US banks, serving as the primary federal regulator for state nonmember banks, which includes the majority of the nation's community banks, and carrying out important responsibilities for global systemically important banks under Dodd Frank. The Federal Deposit Insurance Act provides that "management of the Corporation shall be vested in a Board of Directors."<sup>45</sup> The Act vests the substantive and procedural decision making of the FDIC in the Board by explicitly empowering the Board to exercise "all powers specifically granted by the provisions of this chapter, and such incidental powers as shall be necessary to carry out the powers so granted."<sup>46</sup>

Each member of the Board is responsible for exercising their authority independently to carry out the responsibilities set forth in the Act. As Chairman and Acting Chairman, I have worked closely with all members of the FDIC Board on a collegial and cooperative basis. I strongly support all members of the Board participating fully in its work.

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<sup>45</sup> 12 U.S.C. § 1812(a)(1).

<sup>46</sup> *Id.* § 1819(a).

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**Questions for Mr. Travis Hill, of Maryland, to be a Member and Vice Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, from Chairman Sherrrod Brown:**

1. Where have you excelled in past positions in attracting, hiring, and promoting people of color in positions in your organization/s? Where might there be room for improvement?

**Over the course of my career, I generally have not been in a position that involved hiring and promoting people. However, I have frequently worked with, and have had strong relationships with, people from all different types of backgrounds, including people of color. That would certainly continue if I am confirmed to serve on the FDIC Board.**

2. What specific measures will you use to evaluate the success of the FDIC in understanding and addressing the needs of Black, Indigenous and people of color (BIPOC)? And, will you work with the Chair and other board members to keep Congress apprised, as appropriate, on the progress being made on these measures?

**The FDIC currently engages in a range of activities and initiatives to understand and address the needs of underserved communities, including communities consisting of Black, Indigenous, and people of color. For example, the FDIC engages in many ways to promote and preserve minority depository institutions (MDIs), which typically focus on communities consisting of people of color.<sup>1</sup> The FDIC also takes a number of steps to promote financial inclusion among underserved populations; for example, in 2021 and 2022, the FDIC initiated a public awareness campaign called #GetBanked to raise awareness about the benefits of opening a bank account.<sup>2</sup> The FDIC also conducts a biennial survey looking into unbanked and underbanked households, which includes reporting specific data for minority communities.<sup>3</sup> If confirmed, I will work with FDIC to better understand ongoing FDIC initiatives and the extent to which more should be done. If confirmed, I will work with the Chair and other members of the Board to keep Congress apprised, as appropriate, on progress that is made.**

3. What is your plan for creating an inclusive working environment for employees within your office?

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<sup>1</sup> See, e.g., FDIC, Resources: Minority Depository Institutions Program, available at <https://www.fdic.gov/regulations/resources/minority/mdi.html>.

<sup>2</sup> See FDIC, #GetBanked, available at <https://www.fdic.gov/getbanked/index.html>.

<sup>3</sup> See FDIC National Survey of Unbanked and Underbanked Households, 2021 survey, available at <https://www.fdic.gov/analysis/household-survey/2021report.pdf>.

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**My understanding is that Board members at the FDIC typically have had very small staffs. If confirmed, I would certainly work to ensure that every staff member who works for me feels like our office is a welcoming and inclusive environment.**

4. Do you commit to extending the diversity, equity, and inclusion principles identified in question 1-3 to any staff you may hire from outside of the FDIC?

**I will certainly keep these principles in mind when hiring and managing staff.**

5. Do you believe your nomination advances diversity on the FDIC Board?

**I am grateful to have been nominated by President Biden for this position. I believe it is valuable for the FDIC Board to include members with diverse backgrounds, views, and perspectives. If confirmed, I will bring a unique set of views to the Board, and can commit to being independent- and open-minded. I also commit to considering input from a broad range of stakeholders on matters before the Board.**

6. The National Treasury Employees Union (NTEU) represents the FDIC’s employees. Describe your experience working with collective bargaining units, and the workers they represent, to meet mission objectives.

**I have never in my career had any experience working with collective bargaining units. I have extensive experience working with FDIC staff on policy matters and other issues related to the FDIC mission, but I never participated in any conversations with members of the FDIC union on union-related issues.**

7. Section 2(a)(1) of the Federal Deposit Insurance Act requires that one member of the Board has “state bank supervisory experience.” Do you believe you have this experience?

**Yes. I worked for close to four years as a staff member at the FDIC, which primarily supervises state-chartered banks that are not members of the Federal Reserve system. I participated in this work as the Chairman’s Deputy for Policy and Senior Advisor to the Chairman. My understanding is that historical Senate practice has been that experience working for a federal supervisor of state-chartered banks qualifies as state bank supervisory experience for purposes of the Federal Deposit Insurance Act.**

8. Have you ever written a report of examination or issued an exam rating to a community bank?

**No.**

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9. Ultimately, the FDIC’s regulation and supervision policies are implemented by the agency’s examiners.

a. What is necessary for the FDIC’s examiners to successfully implement new FDIC safety and soundness and compliance policies?

**To become commissioned examiners, FDIC examiners undergo extensive training. When the FDIC issues new safety and soundness and compliance policies, the FDIC often requires examiners to undergo additional training to ensure they understand and appropriately incorporate the new policies.**

b. What policy implementation gaps exist today and how should the FDIC board remediate these matters?

**If confirmed, I would engage with FDIC staff and other members of the Board to understand whether policy implementation gaps exist and how they should be remediated.**

10. In December 2020, the Federal Reserve Board announced that it formally joined the Network of Central Banks and Supervisors for Greening the Financial System (NGFS). The Board unanimously approved this action, including Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governor Bowman. The FDIC joined the NGFS in 2021. Do you commit that you will not take action to withdraw the FDIC from the NGFS? Yes or no.

**The FDIC joined NGFS in 2022, subsequent to my departure from the agency. I do not know the details of the FDIC’s engagement with NGFS, but if confirmed, I would look forward to engaging with FDIC staff and members of the Board to better understand the FDIC’s engagement with NGFS.**

11. Please describe the range of risks and potential impacts on the financial system posed by climate change, and discuss what is needed to coordinate these matters among domestic and international regulators. Is membership in the Network for Greening the Financial System (NGFS) contrary to the FDIC’s mission to supervise safety and soundness?

**Climate and extreme weather events have always posed risks to banks. To the extent that climate change is causing such events to become more frequent or more damaging, such risks may be increasing. My knowledge of NGFS is limited to public materials, and I do not know the details of the nature of the FDIC’s or other banking agencies’ engagement with the group.**

12. In October 2021, the Financial Stability Oversight Council (FSOC) issued a report identifying “climate change as an emerging and increasing threat to U.S. financial stability.”

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At the time, then-Chair McWilliams served as a voting member of FSOC and was the only member of FSOC that abstained from voting on the report. You served as FDIC’s representative on FSOC’s Deputies Committee.

- a. Please describe with particularity your role in advising Ms. McWilliams on this matter.

**I participated with FDIC staff in providing to FSOC staff several rounds of edits to the report. Once the report was close to being finalized, I had numerous conversations with Chairman McWilliams discussing with her the contents of the report.**

- b. At any time, did you suggest or recommend that Ms. McWilliams abstain from voting on the report?

**The decision to abstain from voting on the report was made by Chairman McWilliams. I do not recall ever suggesting or recommending that she abstain.**

13. Banking consolidation and concentration harms local communities. President Biden has called for a plan to strengthen bank merger guidelines in his Executive Order on Competition. Similarly, the Fed, OCC, and FDIC have raised concerns about domestic, systemically important banks. What are your views on strengthening the bank merger guidelines and to look at these mega mergers more closely to ensure they work for Main Street?

**The FDIC evaluates all bank mergers in accordance with the Bank Merger Act (Section 18(c) of the Federal Deposit Insurance Act).<sup>4</sup> The Bank Merger Act lays out the statutory factors the FDIC must consider before approving a merger. In March 2022, the FDIC issued a Request for Information and Comment regarding the FDIC’s approach to implementing the Bank Merger Act and evaluating bank merger applications. If confirmed, I would plan to review the comments received and engage with FDIC staff and other members of the Board to discuss whether adjustments are warranted to the FDIC’s historical approach to reviewing bank mergers.**

14. For too long, the banking system only worked for Wall Street banks and individuals with significant means. During your time at the agency, what specific actions did the FDIC take to ensure all Americans had equal and fair access to affordable banking services? What other actions should the FDIC take?

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<sup>4</sup> 12 U.S.C. § 1828(c).

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While I was at the FDIC, the agency took a broad range of actions to promote equal and fair access to affordable banking services for all Americans. For example, in September 2021, the FDIC launched the Mission-Driven Bank Fund to help MDIs and community development financial institutions (CDFIs) raise capital to serve their communities, which are often underserved communities.<sup>5</sup> This is one of many steps the FDIC took to support MDIs. Additionally, in 2021 and 2022, the FDIC initiated a public awareness campaign called #GetBanked to raise awareness about the benefits of opening a bank account.<sup>6</sup> The FDIC has also worked with the Cities for Financial Empowerment Fund to promote the Bank On initiative, which promotes low cost deposit options for consumers.<sup>7</sup> The FDIC also engages in a variety of financial education efforts. Under Chairman McWilliams, the FDIC continued to regularly update its Money Smart program.<sup>8</sup> If confirmed, I will work with FDIC staff to better understand the full range of FDIC initiatives and the extent to which more can or should be done.

15. We have seen banks engage in unfair and deceptive consumer banking practices and pay fine after fine when they get caught. Banks treat these fines as a cost of doing business, not a business requirement.

a. What can the FDIC do to encourage better compliance with consumer regulations?

**The FDIC conducts examinations of FDIC-supervised institutions’ compliance with consumer protection laws and regulations, fair lending laws and regulations, and the Community Reinvestment Act. To the extent that an examination results in findings of deficiencies in an institutions’ compliance program or violations of laws or regulations, the institution is required to remediate these issues, and the FDIC has various tools to ensure remediation occurs. The FDIC also conducts investigations of institutions in response to specific complaints. A strong examination program is an important part of promoting regulatory compliance.**

b. What is needed to make the cultural shift away from viewing consumer compliance as a cost of doing business, toward the mindset that consumer compliance is a business requirement for all banking organizations?

<sup>5</sup> See Press Release: FDIC Launches Mission-Driven Bank Fund (Sept. 16, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21086.html>.

<sup>6</sup> See FDIC, #GetBanked, available at <https://www.fdic.gov/getbanked/index.html>.

<sup>7</sup> See, e.g., Remarks by FDIC Chairman Jelena McWilliams at the 2021 Bank On National Conference (Nov. 15, 2021), available at <https://www.fdic.gov/news/speeches/2021/spnov1521.html> (“During this time, the FDIC has supported the Bank On efforts through technical assistance and collaboration with both the CFE Fund and financial institutions.”)

<sup>8</sup> See FDIC, Resources: Money Smart, available at <https://www.fdic.gov/resources/consumers/money-smart/index.html>.

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**Promoting compliance with all applicable laws and regulations is a critical component of the FDIC’s role as a bank supervisor. If confirmed, I will engage with the FDIC staff regarding FDIC efforts to ensure banks are operating in compliance with applicable laws and regulations, and whether more can or should be done.**

16. Too often, banks treat all fines as a cost of doing business. In general, do you agree that the FDIC should take strong enforcement actions with significant penalties when banks violate the law? Do you view enforcement and penalties as a deterrent?

**I agree that the FDIC should take strong enforcement actions when institutions violate the law. I agree enforcement and penalties can serve as a deterrent.**

17. It is widely acknowledged the regulatory enhancements since the great recession have mitigated the risk of too-big-to-fail (TBTf). The FDIC along with the Fed and OCC plan to implement the final set of Basel III standards.
- a. What gaps remain in the framework to prevent TBTf?

**The FDIC, often working with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency, took a number of steps to improve the resiliency of the financial system following the 2008 financial crisis. This includes adjustments to the quality and quantity of capital, standardized liquidity requirements for the largest institutions, and a new resolution framework for the largest banks. If confirmed, I would engage with FDIC staff and other members of the Board to identify the extent to which gaps still exist and need to be addressed.**

- b. What are the capital or supervisory enhancements you would like to consider as part of this implementation?

**I am aware that the banking agencies have put forth substantial work on a proposal to implement the final set of Basel III standards and review other aspects of the capital framework. Without wanting to prejudge, I can commit to engaging with FDIC staff and other members of the Board with an open mind regarding potential capital and other supervisory enhancements if confirmed.**

18. Please provide detailed responses to the following questions related to crypto and digital assets:
- a. What is your current outlook on the role of crypto assets in the banking system?

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As far as I am aware, banks’ engagement with crypto-related activities is relatively limited. On April 7, 2022, the FDIC issued a Financial Institutions Letter describing risks associated with crypto-related activities and instructing FDIC-supervised institutions to notify the FDIC of any intent to engage in crypto-related activities.<sup>9</sup> My understanding is that there is also ongoing interagency work with the FDIC, the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency to provide broader policy guidance for crypto-related activities.<sup>10</sup>

- b. What prerequisites are necessary for the banking system, and for individual banks, to engage in the crypto market place?

**The FDIC’s role includes ensuring that any banks that engage in crypto-related activities do so in a safe and sound manner and in compliance with applicable laws and regulations. This includes, for example, ensuring that banks have the risk management policies and technological capabilities in place that are warranted given the specific types of activities the bank engages in.**

- c. What investor and consumer protection challenges must be addressed with the banking of crypto assets?

**The FDIC’s supervisory role includes ensuring that any banks engaged in crypto-related activities are operating in compliance with all applicable laws and regulations, including those that protect consumers. My understanding from my time at the FDIC is that the interagency crypto work includes discussion of consumer protection issues, and if confirmed, I would engage with staff to understand the status of such work. Broader questions related to investor and consumer protections are better answered by Congress or regulators with more direct authorities over those areas.**

19. Please provide detailed responses to the following questions related to cybersecurity:

<sup>9</sup> FIL-16-2022, Notification of Engaging in Crypto-Related Activities (April 7, 2022), available at <https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html#letter>.

<sup>10</sup> See, e.g., FDIC, Remarks by FDIC Acting Chairman Martin J. Gruenberg at the Brookings Institution on the Prudential Regulation of Crypto-Assets (Oct. 20, 2022), available at <https://www.fdic.gov/news/speeches/2022/spoct2022.html> (“As the FDIC and the other Federal banking agencies develop a better collective understanding of the risks associated with these activities, we expect to provide broader industry guidance on an interagency basis.”); OCC, Acting Comptroller of the Currency Michael J. Hsu Remarks to the Harvard Law School and Program on International Financial Systems Roundtable on Institutional Investors and Crypto Assets, “Don’t Chase” (Oct. 11, 2022) (“... I see three areas that need clarity about supervisory expectations in the near term: (1) liquidity risk management of deposits from crypto-asset companies, including stablecoin issuers, (2) finder activities, especially related to crypto trade facilitation, and (3) crypto custody. Interagency efforts are fairly advanced on the first two.”).

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- a. What type of risk does cybersecurity present to individual banks, bank customers, and the banking system as a whole?

**Cybersecurity is often cited as one of the top risks banks face. For example, the Federal Reserve’s Supervision and Regulation report from May 2022 noted, “Cybersecurity is a critical component of operational resilience and remains the top risk identified at supervised firms.”<sup>11</sup> Cyber attacks can take a number of forms and present a range of risks for bank, bank customers, and the banking system as a whole. For example, there has been a rise in ransomware attacks in recent years.**

- b. Are there tools in the FDIC’s toolkit sufficient to respond to this type of risk?

**The FDIC engages in a number of activities to promote cybersecurity at FDIC-insured banks. The FDIC examines the information technology (IT) practices of FDIC-supervised institutions and assigns institutions an IT rating. The FDIC also has authority to examine third-party service providers under the Bank Service Company Act. The FDIC also plays a role in sharing with banks information related to identified vulnerabilities. If confirmed, I would engage with FDIC staff to better understand the nature of the threats and whether the FDIC’s toolkit is sufficient.**

20. Are there any Dodd-Frank regulations applicable to FDIC that you believe need to be revisited or reexamined? If your answer is “yes,” please explain in detail what regulation(s) and why you believe the regulation needs to be revisited or reexamined.

**I believe it is generally warranted for government agencies to periodically review and reexamine rulemakings over time. If confirmed, I would join the FDIC with an open mind and would remain open-minded if FDIC staff or other members of the Board suggested a reexamination of a particular regulation was warranted.**

21. Do you agree that illegal or discriminatory practices at a bank should be a basis to downgrade a bank’s Community Reinvestment Act (CRA) rating?

**My understanding is that under existing rules, a bank’s CRA performance may be adversely affected by evidence of discriminatory or other illegal credit practices.<sup>12</sup>**

<sup>11</sup> Board of Governors of the Federal Reserve System, Supervision and Regulation Report (May 2022), at 21, available at <https://www.federalreserve.gov/publications/files/202205-supervision-and-regulation-report.pdf>.

<sup>12</sup> 12 C.F.R. § 25.17.

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**Given that there is an open rulemaking to update the CRA, I do not want to prejudge, but I will approach all aspects of the rulemaking effort with an open mind if confirmed.**

22. In 2021, then-Chair McWilliams blocked the majority of the FDIC Board from voting to review the regulatory process for bank mergers. After attempts to work with then-Chair McWilliams, board members raised the request for information (RFI) by notational vote, which is expressly permitted by the FDIC’s bylaws. Then-Chair McWilliams ruled out of order the request to have the notational vote recorded in the minutes. At the time, you served as Senior Advisor to then-Chair McWilliams and Deputy to the Chair for Policy.

- a. Please describe with particularity your role in advising Ms. McWilliams on this matter.

**I participated in meetings in which discussion included how to respond to actions taken by members of the Board of Directors in November and December 2021. I also engaged with FDIC staff to ensure that Board members received from staff (1) staff feedback on the draft RFI the CFPB Director had shared and (2) a revised draft RFI.**

- b. At any time, did you suggest or make a recommendation to Ms. McWilliams that she rule out of order the request to have the notational vote recorded in the minutes?

**I do not recall ever suggesting or recommending that the Chairman rule out of order the request to have the notational vote recorded in the minutes.**

- c. Do the FDIC bylaws provide the Chair with the authority to prevent the majority of the Board from presenting items for a vote? If yes, please provide the statutory or legal basis you relied on to reach this conclusion.

**When I was at the FDIC, I was told by FDIC staff that the historical practice at the FDIC was that the Chairman controlled the Board agenda. I am aware that the bylaws have been changed subsequent to my departure from the agency. Article IV, Section 6(a) of the bylaws, as amended, provides that “[regular] meetings shall consider such item(s) of business that the Chairperson shall direct, or such item(s) that another member of the Board of Directors may request . . .” Article IV, Section 6(b) of the bylaws, as amended, provides that “[special] meetings shall consider such item(s) of business that the Chairperson shall direct, or such item(s) that another member of the Board of Directors may request . . .” Article IV, Section 6(g) of the bylaws, as amended, provides that “The Board of Directors may transact business through circulation of written items, by the Executive Secretary. . . . The Executive Secretary shall circulate such item(s) of business upon the request of the Chairperson, or a member of the**

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**Board . . .” If confirmed, I will engage with FDIC staff and the Chairman to understand the new bylaws and process.**

23. Senator Toomey referred to an internal FDIC policy that meeting materials be circulated to FDIC Board members at least two weeks prior to Board meetings.

a. Are you aware of this policy?

**Yes.**

b. During your time at the FDIC, did the Chair you worked for meet this two week deadline for every board matter for which you were responsible?

**The “two week deadline” is a reference to when staff are expected to distribute materials to Board members (or their deputies). This policy predated Chairman McWilliams’ arrival at the FDIC. During my tenure at the FDIC, staff sometimes met this deadline, and sometimes did not, which to my understanding was generally consistent with historical practice. There were a variety of reasons why deadlines were sometimes met and sometimes not met, including that many of the FDIC rulemakings are interagency, and the other agencies have their own timelines and processes. By contrast, my recollection is that the Securities and Exchange Commission and Commodity Futures Trading Commission have relatively rigid timelines that require materials to be presented to their commissioners one month in advance of a vote, and so the interagency process took that into account when those agencies were involved.**

24. Will you commit that, if confirmed, you will respond in a timely manner and fully comply with all information requests from me? Please answer “yes” or “no.” If your answer is “no,” please explain.

**Yes, presuming the requests are consistent with applicable laws, regulations, and FDIC policy.**

25. Please describe with particularity the process by which you answered these questions for the record, including identifying who assisted you in answering these questions along with a brief description of their assistance.

**I prepared these responses on my own. As a part of the process of finalizing my responses, they were reviewed by White House, FDIC, and congressional staff.**

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**Questions for Mr. Travis Hill, of Maryland, to be a Member and Vice Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, from Senator Catherine Cortez Masto:**

*Financial Inclusion*

Nine percent of all Latinos were unbanked, down from 12% in 2019 but still higher than the national average of 4.5%. Eleven percent of all Black Americans were unbanked.

1. What should the FDIC do to support an increase in access to banking services for Latino and Hispanic families, especially those earning under \$50,000/year?

Access to banking services for Latino and Hispanic families, especially those with lower incomes, is an important issue. The FDIC engages in a range of activities to promote increased banking services for unbanked households and underserved communities, including Latino and Hispanic communities. For example, in 2021 and 2022, the FDIC initiated a public awareness campaign called #GetBanked to raise awareness about the benefits of opening a bank account.<sup>1</sup> These campaigns went beyond the FDIC’s traditional community outreach efforts and targeted cities with significant underserved minority populations. Also in 2021, FDITech, the FDIC’s Office of Innovation, held a tech sprint entitled “Breaking Down Barriers: Reaching the Last Mile of the Unbanked” to solicit new approaches for bringing more unbanked individuals into the banking system.<sup>2</sup> In September 2021, the FDIC launched the Mission-Driven Bank Fund to help minority depository institutions (MDIs) and community development financial institutions (CDFIs) raise capital, which was in part an effort to address unbanked households.<sup>3</sup> I believe these types of initiatives are helpful. Additionally, it is important that the FDIC’s supervisory approach appropriately balances the need for safety and soundness with promoting broad access to credit.

2. What should the FDIC do to support an increase in access to banking services for Southeast Asian, Indigenous and Pacific Islander families, especially those earning under \$50,000/year?

Access to banking services for Southeast Asian, Indigenous and Pacific Islander families, especially those with lower incomes, is an important issue. As noted above, the FDIC engages in a range of activities to promote increased banking services for unbanked households and underserved communities, including Southeast Asian, Indigenous and Pacific Islander communities. For example, in 2021 and 2022, the FDIC initiated its #GetBanked public awareness to raise awareness about the benefits

<sup>1</sup> See FDIC, #GetBanked, available at <https://www.fdic.gov/getbanked/index.html>.

<sup>2</sup> See Press Release: FDITech Selects Three Winning Teams in Tech Sprint to Reach the Unbanked (Sept. 13, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21085.html>.

<sup>3</sup> See Press Release: FDIC Launches Mission-Driven Bank Fund (Sept. 16, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21086.html>.

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of opening a bank account.<sup>4</sup> These campaigns went beyond the FDIC’s traditional community outreach efforts and targeted cities with significant underserved minority populations. Also in 2021, FDITech held a tech sprint entitled “Breaking Down Barriers: Reaching the Last Mile of the Unbanked” to solicit new approaches for bringing more unbanked individuals into the banking system.<sup>5</sup> In September 2021, the FDIC launched the Mission-Driven Bank Fund to help MDIs and CDFIs raise capital, which was in part an effort to address unbanked households.<sup>6</sup> I believe these types of initiatives are helpful. Additionally, it is important that the FDIC’s supervisory approach appropriately balances the need for safety and soundness with promoting broad access to credit.

3. What should the FDIC do to support an increase in access to banking services for Black and African American families, especially those earning under \$50,000/year?

Access to banking services for Black and African American families, especially those with lower incomes, is an important issue. As noted above, the FDIC engages in a range of activities to promote increased banking services for unbanked households and underserved communities, including Black and African American communities. For example, in 2021 and 2022, the FDIC initiated its #GetBanked public awareness campaign to raise awareness about the benefits of opening a bank account.<sup>7</sup> These campaigns went beyond the FDIC’s traditional community outreach efforts and targeted cities with significant underserved minority populations. Also in 2021, FDITech held a tech sprint entitled “Breaking Down Barriers: Reaching the Last Mile of the Unbanked” to solicit new approaches for bringing more unbanked individuals into the banking system.<sup>8</sup> In September 2021, the FDIC launched the Mission-Driven Bank Fund to help MDIs and CDFIs raise capital, which was in part an effort to address unbanked households.<sup>9</sup> I believe these types of initiatives are helpful. Additionally, it is important that the FDIC’s supervisory approach appropriately balances the need for safety and soundness with promoting broad access to credit.

4. How will you use your position on the FDIC Board to advance bank access parity, particularly for immigrant and non-English speaking communities?

During my time at the FDIC, the agency engaged in a variety of outreach efforts to reach non-English speaking and immigrant communities. For example, the FDIC’s Spanish-Speaking Communities Initiative in 2020 and 2021 resulted in affordable small dollar loans being provided to more than 200 Spanish-speaking households and

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<sup>4</sup> See *supra* note 1.

<sup>5</sup> See *supra* note 2.

<sup>6</sup> See *supra* note 3.

<sup>7</sup> See *supra* note 1.

<sup>8</sup> See *supra* note 2.

<sup>9</sup> See *supra* note 3.

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businesses.<sup>10</sup> The FDIC’s #GetBanked campaign included advertisements in both English and Spanish. The FDIC’s call center employs many Spanish-speaking agents and has a translation service that can assist in more than forty languages.<sup>11</sup> The FDIC engages in financial literacy efforts in multiple different languages. If confirmed, I will engage with FDIC staff on these types of initiatives.

5. How will you ensure that FDIC institutions provide assistance or service to English-speaking customers who struggle with literacy, particularly those who may be experiencing adult illiteracy?

**The FDIC has a number of initiatives designed to promote access to financial services in underserved communities, and if confirmed, I would look forward to engaging with FDIC staff on the particular issue of individuals who struggle with literacy.**

*Third-Party Service Providers*

6. Do you agree with Chair Gruenberg’s statement that third parties which offer services on behalf of an FDIC-regulated entity, should be regulated as if that entity is providing that service itself and bear the compliance responsibility?

**The FDIC’s 2008 guidance on managing third-party relationships notes, “A financial institution’s board of directors and senior management are responsible for identifying and controlling risks arising from third-party relationships to the same extent as if the third-party activity were handled within the institution.”<sup>12</sup> At the November 15, 2022 hearing before the Senate Committee on Banking, Housing, and Urban Affairs, Acting Chairperson Gruenberg stated, “When a bank partners with a third-party and the third-party is providing services on behalf of the bank, including credit products, as a supervisory matter the offering of services by the third-party are treated as if the bank itself is offering those services and products, and the bank is supervised accordingly.”<sup>13</sup> I agree that as a supervisory matter, if a bank makes loans through a third-party, the loans are subject to the same standards and expectations as if the loans were made directly to the consumer by the bank without the presence of the third-party.**

7. If confirmed, how will you increase our understanding and awareness of the frequency of cyber incidents among third-party service providers utilized by FDIC member institutions?

**In November 2021, the FDIC, along with the Board of Governors of the Federal Reserve and the Office of the Comptroller of the Currency, issued a joint final rule to**

<sup>10</sup> See FDIC 2021 Annual Report, at 74-75, available at <https://www.fdic.gov/about/financial-reports/reports/2021annualreport/2021-annual-report.pdf>.

<sup>11</sup> See *Id.* at 199.

<sup>12</sup> FIL-44-2008, Guidance for Managing Third-Party Risk (June 6, 2008), available at <https://www.fdic.gov/news/financial-institution-letters/2008/fil08044a.html>.

<sup>13</sup> Oversight of Financial Regulators: A Strong Banking and Credit Union System for Main Street, Hearing Before the Senate Committee on Banking, Housing, and Urban Affairs, 116th Cong. (2022).

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establish computer-security incident notification requirements for banks and third-party service providers.<sup>14</sup> Under the rule, bank service providers must notify as soon as possible any bank impacted by a computer-security incident that has materially disrupted or degraded, or is reasonably likely to materially disrupt or degrade, services provided to the bank for four or more hours. If confirmed, I will engage with FDIC staff and banking institutions regarding implementation of the rule to ensure material incidents are promptly reported.

8. How will you ensure that third parties contracted for work with non-English speaking or low-income communities by FDIC member institutions meet statutory requirements for fair access?

To my knowledge, as part of all FDIC examinations, FDIC examiners work to ensure that FDIC-supervised institutions operate in compliance with all applicable laws and regulations. FDIC institutions are also expected to manage all risks arising from relationships with third-parties. If confirmed, I would work to ensure this continues.

*Digital Access*

9. How can FDIC members help bridge the digital divide, which disproportionately blocks low-income consumers from accessing online depository services?

Like all businesses, FDIC-insured banks are subject to market pressures. In recent years, customers have increasingly turned to mobile phones for banking services. According to the FDIC’s most recent study on unbanked households, between 2017 and 2021, the percentage of households whose primary method of accessing bank accounts was a mobile phone increased from 15.1% to 43.5%, while the number who cited online banking decreased from 37% to 22%, and the number who cited a bank teller decreased from 25% to 15%.<sup>15</sup> Overall, the percentage who used a “physical channel” (bank teller or ATM) decreased from 44% to 31% over the same time period.<sup>16</sup> This trend has put pressure on many FDIC-insured institutions to invest in offering improved mobile banking services. Nonetheless, as you note, not everyone has the ability to access online or mobile banking. While addressing issues related to access to the internet is outside the FDIC’s authorities, it is an important aspect of financial inclusion to promote banking services for all Americans.

10. If confirmed, what role would you play in promoting the FDIC’s outreach to young people through digital means to educate them on the FDIC and financial literacy opportunities?

<sup>14</sup> Computer-Security Incident Notification Requirement for Banking Organizations and Their Bank Service Providers, 86 Fed. Reg. 66,424 (November 23, 2021), available at <https://www.fdic.gov/news/board-matters/2021/2021-11-17-notational-fr.pdf>.

<sup>15</sup> FDIC National Survey of Unbanked and Underbanked Households, 2021 survey, available at <https://www.fdic.gov/analysis/household-survey/2021report.pdf>.

<sup>16</sup> *Id.*

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In recent years, the FDIC has engaged in wide-ranging outreach to the public to provide education on the FDIC and financial literacy, including outreach to young people. For example, the FDIC’s Money Smart curriculum includes financial education tools for consumers of all ages.<sup>17</sup> The FDIC’s Money Smart for Young People includes products specifically designed for young people.<sup>18</sup> In 2021, the FDIC also worked on specific financial education programs, including one with banks and the City of Philadelphia targeting more than 2,000 young people and another with a bank and an Orange County, California workforce program.<sup>19</sup> If confirmed, I will work with FDIC staff to learn more about these types of programs.

*Housing*

11. Do you agree with the research that finds that appraisal bias is a systemic and longstanding problem in the housing market?

**I have not studied this issue or research in depth. I have read stories detailing specific anecdotes of appraisal bias that are highly concerning. I appreciate that this is an important issue, and if confirmed I will engage with FDIC staff to learn more about existing research and the FDIC’s role.**

12. If confirmed, what steps will you take to support special purpose credit programs and other mortgage initiatives to reduce the Black/Latino-white racial homeownership gap?

**The Equal Credit Opportunity Act (ECOA) and Regulation B permit lenders to create “special purpose credit programs” to extend credit to applicants who meet certain eligibility requirements. Earlier this year, the FDIC joined an interagency statement discussing treatment of such programs under ECOA and Regulation B.<sup>20</sup> If confirmed, I will engage with FDIC staff to better understand the issue and examine whether additional opportunities exist for the FDIC to consider.**

13. Recent increases in interest rates mean that mortgage financing costs will be challenging for aspirant homeowners in the short run. If confirmed, how will you work to promote affordable mortgages, given the macroeconomic pressures? Do you see a role for the FDIC to enable lenders to use mortgage credit certificates for some loans?

**Recent increases in interest rates have led to a significant increase in mortgage rates. The average 30-year fixed rate mortgage interest rate, according to Freddie Mac,**

<sup>17</sup> See FDIC, Resources: Money Smart, available at <https://www.fdic.gov/resources/consumers/money-smart/index.html>.

<sup>18</sup> See FDIC, Resources: Money Smart for Young People, available at <https://www.fdic.gov/resources/consumers/money-smart/teach-money-smart/money-smart-for-young-people/index.html>.

<sup>19</sup> See FDIC 2021 Annual Report, *supra* note 10, at 73.

<sup>20</sup> Interagency Statement on Special Purpose Credit Programs under the Equal Credit Opportunity Act and Regulation B (Feb. 22, 2022), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_spec\\_interagency-statement\\_2022-02.pdf](https://files.consumerfinance.gov/f/documents/cfpb_spec_interagency-statement_2022-02.pdf).

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surpassed 7% last month, the highest in approximately 20 years, before falling back to approximately 6.5%, approximately double the average rate at the start of 2022.<sup>21</sup> As a result, the cost of mortgage credit has increased notably for homebuyers, including first-time homebuyers. The FDIC has a relatively limited role in promoting housing affordability, relative to many other federal and state agencies. However, if confirmed, I will engage with FDIC staff and other members of the Board to better understand how the FDIC is using current authorities and whether there is more that can or should be done.

*Risk*

14. What are some of the risks in the non-bank sector that you think pose risks to the financial sector, especially to FDIC-regulated entities?

According to the Federal Reserve Board’s most recent financial stability report, bank lending to nonbank financial institutions has grown significantly in recent years, reaching almost \$2 trillion in the second quarter of 2022.<sup>22</sup> As the report notes, over the past decade, delinquency rates on exposures to nonbank financial firms have been lower than those from the nonfinancial business sector. Nonetheless, the increase in lending to nonbank financial firms may pose risks to banks. Some nonbank firms may be less resilient to changes in the macroeconomic environment than banks (who are subject to robust capital and other prudential requirements) and may rely on less reliable sources of funding. Additionally, the growth in credit provided to the broader economy by nonbanks may pose risks, such as the possibility that such firms are less resilient to changes in macroeconomic conditions than banks.

15. How should the FDIC mitigate those risks for its regulated banks?

The FDIC has a range of tools to promote safety and soundness of banks. Evaluating a bank’s lending policies and loans is a critical component of FDIC supervision. As noted in the FDIC examination manual, “The examiner’s evaluation of an institution’s lending policies, credit administration, and the quality of the loan portfolio is among the most important aspects of the loan examination process.”<sup>23</sup> The FDIC should continue to use its supervisory tools to promote safe and sound lending practices.

16. What risks in the non-bank sector do you think pose risks to banks regulated by the FDIC?

I appreciate there are potential risks associated with FDIC-insured banks’ exposure to nonbank financial institutions. If confirmed, I will work with FDIC staff to better

<sup>21</sup> See <https://fred.stlouisfed.org/series/MORTGAGE30US>.

<sup>22</sup> Board of Governors of the Federal Reserve System, Financial Stability Report (November 2022), at 48, available at <https://www.federalreserve.gov/publications/files/financial-stability-report-20221104.pdf>.

<sup>23</sup> FDIC, Risk Management Manual of Examination Policies, at 3, available at <https://www.fdic.gov/regulations/safety/manual/section3-2.pdf>.

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**understand these risks, and to examine FDIC data regarding FDIC-supervised institutions’ exposure to such firms.**

17. If confirmed, how will you ensure that the financial institutions regulated by the FDIC are resilient to climate disasters such as hurricanes, floods and droughts?

**The FDIC has long required financial institutions to consider and appropriately address potential risks posed by the climate in their operating environment. This includes managing the risk of extreme weather events such as hurricanes, floods, and droughts. Institutions may manage these types of risks in various ways, including by having appropriate insurance coverage or adjusting borrowers’ cash flow estimates based on potential changes to business conditions or agricultural yields. Additionally, earlier this year, the FDIC issued a request for comment on proposed principles for managing climate-related risks, which if approved would apply to institutions with over \$100 billion in total consolidated assets.<sup>24</sup> If confirmed, I would review the comments to this proposal and would engage with FDIC staff and members of the Board to discuss the draft principles and the FDIC’s approach to such risks more broadly.**

*Federal Home Loan Banks*

18. How does FDIC oversight align with the collateral and advances FDIC-regulated banks receive from the Federal Home Loan Banks?

**FDIC examiners pay close attention to how FDIC-supervised banks fund themselves, including their reliance on funding from Federal Home Loan Banks. Examiners also look at how banks manage assets that have been pledged as collateral, including collateral pledged to the Federal Home Loan Banks. Overseeing funding and collateral management are important aspects of FDIC supervision.**

19. Do you think that the Federal Home Loan Banks should provide a lender of last resort role to banks not meeting capital or other supervisory requirements?

**The Federal Reserve is generally considered the lender of last resort for the banking system. Separately, many banks rely on Federal Home Loan Bank funding. Banks must meet certain criteria in order to borrow from the Federal Home Loan banks, including criteria related to banks’ financial condition.**

20. If confirmed, will you ensure that banks do not use Federal Home Loan Bank advances to avoid risk management challenges?

**A core part of FDIC examinations is identifying poor risk management practices. If an FDIC-supervised institution has poor risk management practices, the agency has a**

<sup>24</sup> Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions, 87 Fed. Reg. 19,507 (Apr. 4, 2022), available at <https://www.fdic.gov/news/board-matters/2022/2022-03-29-notational-fr.pdf>.

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range of options available, including a downgrade of the institutions’ supervisory rating or other supervisory criticisms. More broadly, if confirmed, I will work with FDIC staff to better understand banks’ current reliance on Federal Home Loan Bank funding, and what types of risks that might entail.

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**Questions for Mr. Travis Hill, of Maryland, to be a Member and Vice Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, from Senator Tim Scott:**

Affordable access to capital and financial inclusion is crucial for entrepreneurs and small businesses to succeed in starting and growing their businesses. However, many entrepreneurs and small firms, especially women, minorities, and those living in rural areas, struggle to access traditional banking services.

Bank-fintech partnerships have allowed banks to reach these underrepresented population segments and increase customer engagement. Furthermore, to encourage consumer-beneficial innovation, regulators should support innovations in consumer credit underwriting designed to increase credit visibility, reduce bias, and expand credit to underserved consumers.

A number of financial technology firms are on the cutting edge of financial innovation by using alternative data technology, automated credit underwriting, artificial intelligence, and more to achieve increased financial inclusion and expanded access to affordable credit for creditworthy businesses and entrepreneurs.

*Please answer the following with specificity:*

1. Do you believe regulators should support and encourage responsible bank-fintech partnerships as they work to implement new technologies that increase financial inclusion and access to credit?

**Yes, consistent with general safety and soundness and third-party risk management principles. I believe responsible bank-fintech partnerships can be beneficial and can promote financial inclusion and access to credit.**

2. As you review the bank-fintech partnership model, how will you minimize unnecessary regulatory hurdles and ensure that any regulatory actions encourage rather than stifle financial innovation and is commensurate with the actual risk the partnership poses?

**In recent years, partnerships between banks and fintech firms have grown and now appear in many different forms. These partnerships often offer benefits for banks, fintech firms, and their customers. During my time at the FDIC under Chairman McWilliams, the FDIC took a series of steps to facilitate responsible partnerships. For example, one of the goals of FDI Tech, the FDIC’s Office of Innovation, was to encourage innovation and partnerships across the industry, particularly at community banks. The FDIC’s final rule on brokered deposits removed regulatory hurdles for certain types of partnerships.<sup>1</sup> The FDIC initiated work on a public/private standard-**

<sup>1</sup> Unsafe and Unsound Practices: Brokered Deposits and Interest Rates Restrictions, 86 Fed. Reg. 6,742 (January 22, 2021), available at <https://www.fdic.gov/news/board-matters/2020/2020-12-15-notice-dis-a-fr.pdf>.

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**setting organization that would help standardize the due diligence process for certain types of third-parties and technologies to facilitate partnerships.<sup>2</sup> If confirmed, I will work to ensure the FDIC’s regulatory approach appropriately balances safety and soundness with promoting innovation.**

3. One of my biggest priorities is reducing the number of unbanked and underserved households in this country and getting more Americans into the traditional banking system.

According to a 2021 FDIC survey, nearly six million U.S. households were unbanked. We can, and we must, do more to expand opportunities for these individuals to interact with the financial mainstream.

If confirmed, what are your plans to get more of the unbanked and underserved populations into the more traditional, regulated banking system?

**Promoting financial inclusion is an important part of the FDIC’s work. It is critical that the FDIC adopt a well-tailored approach to ensure that banks of all sizes can remain competitive and serve their communities. The FDIC also engages in various other efforts to bring more underserved individuals into the banking system. In 2021 and 2022, the FDIC initiated a public awareness campaign called #GetBanked to raise awareness about the benefits of opening a bank account.<sup>3</sup> Also in 2021, FDITech held a tech sprint entitled “Breaking Down Barriers: Reaching the Last Mile of the Unbanked” to solicit new approaches for bringing more unbanked individuals into the banking system.<sup>4</sup> In September 2021, the FDIC launched the Mission-Driven Bank Fund to help minority depository institutions (MDIs) and community development financial institutions (CDFIs) raise capital, which was in part an effort to address unbanked households and underserved communities.<sup>5</sup>**

4. Will you commit to effectively engaging with innovative banks and fintech companies to properly understand and oversee innovations in financial services – especially those that may help usher Americans stuck on the sidelines into the financial mainstream?

**Yes.**

<sup>2</sup> See Request for Information on Standard Setting and Voluntary Certification for Models and Third-Party Providers of Technology and Other Services, 85 Fed. Reg. 44,890 (July 24, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20083a.pdf>.

<sup>3</sup> See FDIC, #GetBanked, available at <https://www.fdic.gov/getbanked/index.html>.

<sup>4</sup> See Press Release: FDITech Selects Three Winning Teams in Tech Sprint to Reach the Unbanked (Sept. 13, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21085.html>.

<sup>5</sup> See Press Release: FDIC Launches Mission-Driven Bank Fund (Sept. 16, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21086.html>.

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**Questions for Mr. Travis Hill, of Maryland, to be a Member and Vice Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, from Senator Jon Tester:**

*Community Banks*

1. What more can the FDIC, or Congress, do to make sure that community banks can serve Main Street businesses, workers, and families in their communities?

**Community banks often serve as a bedrock institution in their local communities. The FDIC is the primary federal supervisor for the majority of community banks and thus plays a key role in ensuring the continued vitality of community banks. During my prior tenure at the FDIC, the agency took a range of steps to further this goal. The FDIC implemented multiple regulatory adjustments required by S. 2155, and engaged in various other rulemaking efforts to tailor rules for community banks.<sup>1</sup> In 2020, in response to the Covid-19 pandemic, the agency issued a number of temporary rulemakings and other policy documents to ensure community banks had flexibility to continue to serve their customers through a time of economic stress.<sup>2</sup> The FDIC also set up its Office of Innovation, FDItech, with the goal of promoting innovation in the banking industry, particularly at community banks. The FDIC also conducts extensive research on community banking issues.<sup>3</sup> If confirmed, I will work to ensure the FDIC continues these efforts and takes a balanced supervisory approach that promotes safety and soundness of community banks, while also ensuring that community banks can remain competitive and continue to be a driver of economic growth in their local communities.**

2. How will you ensure that the financial institutions you regulate continue to serve rural and frontier communities? And that there is access in Indian Country?

**According to the FDIC, community banks hold the majority of banking deposits in U.S. rural and micropolitan counties.<sup>4</sup> Ensuring the continued vitality of community banks is an important component of ensuring continued access to banking services in rural and frontier communities and in Indian Country. The FDIC also engages in a broad range of financial inclusion efforts to promote banking services for all Americans. The**

<sup>1</sup> See, e.g., Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations, 84 Fed. Reg. 61776 (Nov. 13, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-11-13/pdf/2019-23472.pdf>; Reduced Reporting for Covered Depository Institutions, 84 Fed. Reg. 29039 (June 21, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-06-21/pdf/2019-12985.pdf>.

<sup>2</sup> See, e.g., Applicability of Annual Independent Audits and Reporting Requirements for Fiscal Years Ending in 2021, 85 Fed. Reg. 67428 (Oct. 23, 2020), available at <https://www.fdic.gov/news/board/2020/2020-10-20-notice-dis-c-fr.pdf>; Temporary Asset Thresholds, 85 Fed. Reg. 77345 (Dec. 2, 2020), available at <https://www.fdic.gov/news/board/2020/2020-11-17-notational-fr-a.pdf>.

<sup>3</sup> See, e.g. FDIC Community Banking Study (Dec. 2020), available at <https://www.fdic.gov/resources/community-banking/report/2020/2020-cbi-study-full.pdf>.

<sup>4</sup> FDIC 2021 Annual Report, at 57, available at <https://www.fdic.gov/about/financial-reports/reports/2021annualreport/2021-arfinal.pdf>.

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**FDIC also has an extensive program to promote minority depository institutions (MDIs); there are currently twenty Native American MDIs. If confirmed, I will work to ensure the FDIC continues to take a thoughtful and balanced approach to regulation and supervision that keeps in mind the importance of ensuring access in rural and frontier communities and in Indian Country.**

3. Is there more that should be done legislatively or through regulation to address branch closures?

**The issue of branch closures is a complicated one. After increasing steadily for decades, total bank branches peaked in 2009, and the number has declined each year since 2011.<sup>5</sup> At the same time, consumers have increasingly relied on mobile banking for banking services. According to the FDIC’s most recent study on banked and unbanked households, between 2017 and 2021, the percentage of households whose primary method of accessing bank accounts was a mobile phone increased from 15.1% to 43.5%, while the number who cited online banking decreased from 37% to 22%, and the number who primarily used a “physical channel” (bank teller or ATM) decreased from 44% to 31%.<sup>6</sup> Nonetheless, many consumers across the country continue to rely on bank branches. If confirmed, I would plan to engage with FDIC staff to better understand the market dynamics and assess whether more can or should be done.**

4. What do you see as the most pressing challenges for banks, especially community banks, in the coming years?

**Banks and community banks face an array of challenges. In the short-term, one of the biggest challenges is the current macroenvironment, with a combination of high inflation, rising interest rates, and slow growth. Cybersecurity threats are always present. There are also geopolitical risks, including the war in Ukraine and increasing tension with China. Competition from nonbanks, including technology companies, remains a persistent challenge. Recruitment and succession planning have also often been cited as challenges, especially for small banks.**

5. Generally, what is your view and approach to the regulatory responsibilities of members of the Federal Deposit Insurance Corporation Board?

**I think it is critically important that the members of the FDIC Board adopt a balanced approach to regulation that promotes the safety and soundness of banks and the stability of the banking system while also ensuring banks can remain competitive, serve their customers and communities, and lend throughout economic cycles. It is also**

<sup>5</sup> See FDIC, BankFind Suite: Find Annual Historical Bank Data, available at [https://banks.data.fdic.gov/explore/historical?displayFields=STNAME%2CTOTAL%2CBRANCHES%2CNew\\_Char&selectedEndDate=2021&selectedReport=CBS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc](https://banks.data.fdic.gov/explore/historical?displayFields=STNAME%2CTOTAL%2CBRANCHES%2CNew_Char&selectedEndDate=2021&selectedReport=CBS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc).

<sup>6</sup> FDIC National Survey of Unbanked and Underbanked Households, 2021 survey, available at <https://www.fdic.gov/analysis/household-survey/2021report.pdf>.

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**important that the FDIC continues to fulfill its vital role in insuring deposits and ensuring Americans have a safe, accessible place to leave their savings.**

*Lending Decisions*

6. In your opinion, is it the role of the FDIC, or any other federal financial regulators, to discourage banks from lending to coal, oil, and gas manufacturers? Or other industries?

**No. In my view, it is not the role of the FDIC or any other federal financial regulators to discourage banks from lending to any category of lawful industries. I support the following approach, found in the FDIC’s 2015 Statement on Providing Banking Services: “Financial institutions that can properly manage customer relationships and effectively mitigate risks are neither prohibited nor discouraged from providing services to any category of customer accounts or individual customer operating in compliance with applicable state and federal law.”<sup>7</sup>**

*Risks to Economic Stability*

7. How will you work to address cyber threats? How will you evaluate when new risks are arising and how to address them?

**Cybersecurity is often cited as one of the top risks banks face. For example, the Federal Reserve’s Supervision and Regulation report from May 2022 noted, “Cybersecurity is a critical component of operational resilience and remains the top risk identified at supervised firms.”<sup>8</sup> Cyber attacks can take a number of forms and present a range of risks for bank, bank customers, and the banking system as a whole. The FDIC engages in a number of activities to promote cybersecurity at FDIC-insured banks. The FDIC examines the information technology (IT) practices of FDIC-supervised institutions and assigns institutions an IT rating. The FDIC also has authority to examine third-party service providers under the Bank Service Company Act. The FDIC also plays a role in sharing with banks information related to identified vulnerabilities. If confirmed, I would engage with FDIC staff to better understand the nature of the threats and whether the industry and government are taking adequate steps to address the risks.**

*Innovation*

As new financial products and technologies are developed and existing products evolve federal financial regulators will have opportunities to shape the ecosystem around cryptocurrencies and other “FinTech” products and companies, and as regulators have a responsibility to provide adequate protections for our financial system and consumers.

<sup>7</sup> FIL-5-2015, Statement on Providing Banking Services (Jan. 28, 2015), available at <https://www.fdic.gov/news/financial-institution-letters/2015/fil15005.pdf>.

<sup>8</sup> Board of Governors of the Federal Reserve System, Supervision and Regulation Report (May 2022), at 21, available at <https://www.federalreserve.gov/publications/files/202205-supervision-and-regulation-report.pdf>.

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8. What is your view of the current regulation and oversight in this space? What do you believe works well and what would you change at the FDIC?

**The FDIC’s primary focus is on ensuring the safety and soundness of FDIC-insured banks. To the extent FDIC-insured banks partner with fintech companies, the FDIC has authorities under the Bank Service Company Act to examine and regulate third-parties. Fintechs and other nonbank financial firms that provide financial services also may be competitors to banks who are not subject to the same level of prudential oversight. With respect to crypto-related activities, the FDIC’s focus is on ensuring that banks that engage in such activities do so in a safe and sound manner and in compliance with all applicable laws and regulations. My understanding is the banking agencies continue to work on interagency policy guidance regarding such activities.<sup>9</sup> Overall, I believe the FDIC should continue to focus on its core priorities of ensuring safety and soundness and stability, while adopting a balanced supervisory approach that promotes innovation and ensures community banks can remain competitive.**

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<sup>9</sup> See, e.g., FDIC, Remarks by FDIC Acting Chairman Martin J. Gruenberg at the Brookings Institution on the Prudential Regulation of Crypto-Assets (Oct. 20, 2022), available at <https://www.fdic.gov/news/speeches/2022/spoct2022.html> (“As the FDIC and the other Federal banking agencies develop a better collective understanding of the risks associated with these activities, we expect to provide broader industry guidance on an interagency basis.”); OCC, Acting Comptroller of the Currency Michael J. Hsu Remarks to the Harvard Law School and Program on International Financial Systems Roundtable on Institutional Investors and Crypto Assets, “Don’t Chase” (Oct. 11, 2022) (“... I see three areas that need clarity about supervisory expectations in the near term: (1) liquidity risk management of deposits from crypto-asset companies, including stablecoin issuers, (2) finder activities, especially related to crypto trade facilitation, and (3) crypto custody. Interagency efforts are fairly advanced on the first two.”).

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**Questions for Mr. Travis Hill, of Maryland, to be a Member and Vice Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, from Senator Elizabeth Warren:**

1. The Department of Justice’s Office of Legal Counsel issued a slip opinion on June 29, 2022 in which it concluded that “The Chairperson of the Federal Deposit Insurance Corporation does not have the authority to prevent a majority of the FDIC Board from presenting items to the Board for a vote and decision.”<sup>1</sup> Do you agree with the Office of Legal Counsel’s conclusion?

**During my time at the FDIC, I was told by FDIC staff how the FDIC bylaws had historically been interpreted. The Office of Legal Counsel (OLC) subsequently came to a different conclusion. The OLC opinion noted “that the current Board majority’s understanding of its Bylaws may not be the only possible interpretation.” The opinion also noted that “the Board itself can at any time amend its Bylaws to eliminate any uncertainty about the questions such as the one at issue here.” The FDIC bylaws have subsequently been amended. If confirmed, I will engage with FDIC staff and the Chairman to understand the new bylaws and process.**

2. You served as Senior Advisor and Deputy for Policy to former FDIC Chair Jelena McWilliams from 2018 to February 2022.<sup>2</sup> Please describe the role you played in McWilliams’ decision to block the FDIC board majority from bringing a notational vote before the board to solicit public feedback on bank merger rules.<sup>3</sup>
  - a. Did you attend any meeting or have any discussions with McWilliams, the Chief of Staff, or General Counsel regarding the Chairman’s decision to block the FDIC Board majority?

**I did participate in meetings in which discussion included how to respond to actions taken by members of the Board of Directors in November and December 2021.**

- b. If so, did you ever express any concern with the Chairman, Chief of Staff, or General Counsel regarding the Chairman’s decision to block the FDIC Board majority?

**Based on what I had been told by FDIC staff, my understanding was that the Chairman’s actions were consistent with historical practice at the FDIC.**

<sup>1</sup> *Id.*

<sup>2</sup> White House, “President Biden Announces Key Nominees,” press release, September 20, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/20/president-biden-announces-key-nominees-34/>.

<sup>3</sup> Reuters, “U.S. FDIC chair blocks effort to get public feedback on bank merger rules,” Katanga Johnson and Pete Schroeder, December 14, 2021, <https://www.reuters.com/world/us/us-fdic-chair-mcwilliams-says-vote-initiated-by-majority-democratic-members-out-2021-12-14/>.

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- c. Were you aware of or did you review any legal memo or opinion that concluded the Chairman could block the FDIC Board majority?

**During my time at the FDIC, I recall reviewing and/or hearing about several documents related to this question, including the 2006 memo written by FDIC staff to then-Chairman Sheila Bair that is cited in the OLC opinion. It appears that different people who have read these documents have come to different conclusions regarding how the bylaws at the time should have been construed. Regardless, the bylaws have subsequently been changed, and, as noted above, if confirmed, I will engage with FDIC staff and the Chairman to understand the new bylaws and process.**

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**Questions for Mr. Travis Hill, of Maryland, to be a Member and Vice Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, from Senator Raphael Warnock:**

1. With the rise of fintech and other online lending services, it is easier than ever before to access financial services and products, especially small-dollar loans. I believe under the correct regulatory regime, this can be beneficial to Georgians. If confirmed, how would you approach both encouraging responsible small-dollar lending while also safely monitoring firms within the FDIC’s purview?

During my time at the FDIC, encouraging banks to offer prudently underwritten small dollar loans was a priority for the agency. In November 2018, the FDIC issued a request for information soliciting comments regarding steps the agency could take to encourage FDIC-supervised institutions to offer small-dollar credit products that are responsive to consumer needs and prudently underwritten.<sup>1</sup> In May 2020, the FDIC joined the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the National Credit Union Administration in issuing interagency principles for responsible small dollar loans.<sup>2</sup> The interagency principles were intended to clarify regulatory expectations in a manner that encouraged banks to offer responsible small-dollar loans. If confirmed, I would engage with FDIC staff to better understand the effectiveness of the 2020 principles, how demand for small dollar loans has evolved in recent years, and whether there is more that can be done to enable FDIC-supervised institutions to meet this demand in a safe and sound manner.

2. Is it disproportionately harder to earn the trust of these services in rural communities? How can the FDIC play a role in responsibly promoting sound financial options where lending gaps exist?

Promoting broad access to credit and banking services is an important part of a balanced regulatory approach. As noted above, the 2020 interagency small dollar lending principles<sup>3</sup> were intended to describe regulatory expectations for banks that offer small dollar lending products that are responsible and sound. In rural areas, community banks play a particularly important role. According to the FDIC, community banks hold the majority of banking deposits in U.S. rural and micropolitan counties.<sup>4</sup> If confirmed, I will work with FDIC staff to ensure the agency is taking appropriate steps to promote responsible credit products in underserved communities, including rural communities.

<sup>1</sup> FDIC, Request for Information on Small Dollar Lending (November 2018), available at <https://www.fdic.gov/news/press-releases/2018/pr18084a.pdf>

<sup>2</sup> Interagency Lending Principles for Offering Responsible Small-Dollar Loans (May 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20061a.pdf>

<sup>3</sup> *Id.*

<sup>4</sup> FDIC 2021 Annual Report, at 57, available at <https://www.fdic.gov/about/financial-reports/reports/2021annualreport/2021-arfinal.pdf>

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**Questions for Mr. Jonathan McKernan, of Tennessee, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation, from Chairman Sherrod Brown:**

1. Where have you excelled in past positions in attracting, hiring, and promoting people of color in positions in your organization/s? Where might there be room for improvement?

**It is important that the FDIC foster a diverse workplace. While I generally have not been involved in hiring and promotion decisions, I have supported diversity as a critical value in my past positions in government service, which have focused on advising Senators and other policymakers on legal and policy issues under the federal financial services laws. If confirmed, I would work with the Chair, FDIC staff, and key external stakeholders to understand and facilitate the FDIC’s efforts already underway to attract, hire, and promote people of color in positions at the FDIC. I also would be eager to work with the Chair and others to identify new opportunities to foster diversity at the FDIC.**

2. What specific measures will you use to evaluate the success of the FDIC in understanding and addressing the needs of Black, Indigenous and people of color (BIPOC)? And, will you work with the Chair and other board members to keep Congress apprised, as appropriate, on the progress being made on these measures?

**If confirmed, I would work with the Chair and FDIC staff to understand the specific measures currently used to evaluate the success of the FDIC in understanding and addressing the needs of BIPOC individuals. I also would be interested in working with the Chair, FDIC staff, and key external stakeholders to identify other specific measures to that end.**

**If confirmed, I would work with the Chair and other board members to keep Congress apprised, as appropriate, on the progress being made.**

3. What is your plan for creating an inclusive working environment for employees within your office?

**If confirmed, I would be committed to creating an inclusive working environment for employees. If the Chair permits my office to employ staff, I would, among other things, coordinate with appropriate personnel within the FDIC to recruit diverse candidates for positions within my office. More generally, I would endeavor to ensure that all staff understand that they are valued members of the organization and feel empowered to share their views, I would establish a system for transparently resolving disagreements, and I would eagerly invite constructive criticism.**

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4. Do you commit to extending the diversity, equity, and inclusion principles identified in question 1-3 to any staff you may hire from outside of the FDIC?

**Yes**

5. Do you believe your nomination advances diversity on the FDIC Board?

**I am honored and humbled to have been nominated by the President. If confirmed, I would bring my own unique perspectives to the FDIC Board rooted in my own upbringing, education, and other experiences, including growing up in East Tennessee as the son of a military veteran.**

6. The National Treasury Employees Union (NTEU) represents the FDIC’s employees. Describe your experience working with collective bargaining units, and the workers they represent, to meet mission objectives.

**While I have not had experience working with collective bargaining units, if confirmed, in coordination with the Chair and as appropriate for my role as a member of the FDIC board, I would be interested in meeting with NTEU to meet mission objectives and otherwise understand their priorities, perspectives, and concerns.**

7. Section 2(a)(1) of the Federal Deposit Insurance Act requires that one member of the Board has “state bank supervisory experience.” Do you believe you have this experience?

**As a senior counsel at the Federal Housing Finance Agency, I worked on matters involving state banks, for example, the seller/service eligibility requirements and other aspects of the regulatory framework governing Fannie Mae and Freddie Mac’s management of their counterparty risks posed by state bank and other counterparties.**

8. Have you ever written a report of examination or issued an exam rating to a community bank?

**No, I have not previously served as an examiner.**

9. Ultimately, the FDIC’s regulation and supervision policies are implemented by the agency’s examiners.

- a. What is necessary for the FDIC’s examiners to successfully implement new FDIC safety and soundness and compliance policies?

**If confirmed, I would be eager to work with the Chair and FDIC examiners and other staff to understand the needs of the examiners to successfully implement new FDIC safety and soundness and compliance policies. As an initial matter, I would be interested in confirming that FDIC examiners receive clear direction from FDIC leadership with respect**

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to those policies and also to understand whether examiners have adequate resources to develop new examination procedures, to train on those new procedures, and then to implement those procedures. I would also be interested to understand how examination priorities are set and periodically revised, including with respect to new policies.

- b. What policy implementation gaps exist today and how should the FDIC board remediate these matters?

**If confirmed, I would be eager to work with the Chair and FDIC staff to identify any policy implementation gaps. If any gaps exist, I would be eager to explore opportunities to support the Chair’s efforts to remediate these matters.**

10. In December 2020, the Federal Reserve Board announced that it formally joined the Network of Central Banks and Supervisors for Greening the Financial System (NGFS). The Board unanimously approved this action, including Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governor Bowman. The FDIC joined the NGFS in 2021. Do you commit that you will not take action to withdraw the FDIC from the NGFS? Yes or no.

**I have not studied the NGFS in depth and do not know what future actions the NGFS may take that could impact whether the FDIC should remain a member. For example, if the NGFS required members to make commitments that are contrary to U.S. law or policy, it would not be appropriate for the FDIC to remain a member. If confirmed, I look forward to working with the Chair and the FDIC staff to learn more about the NGFS and the FDIC’s involvement with this organization.**

11. Please describe the range of risks and potential impacts on the financial system posed by climate change, and discuss what is needed to coordinate these matters among domestic and international regulators. Is membership in the Network for Greening the Financial System (NGFS) contrary to the FDIC’s mission to supervise safety and soundness?

**If confirmed, I will do my part to ensure that the FDIC has supervisory and enforcement programs designed to ensure that FDIC-regulated banks operate in a safe and sound manner and in particular that FDIC-regulated banks manage their risks, including those risks posed by climate change, by implementing policies and procedures to identify, assess, mitigate, monitor, and report on those risks. According to the Acting Chair “the FDIC remains in the early stages of addressing climate-related financial risk,” and if confirmed, I would look forward to working with the Chair and FDIC staff to understand this effort and the ways in which I might contribute. I have not studied the NGFS in depth, but believe that before joining any organization, the FDIC should ensure that positions taken by the organization are consistent with the FDIC’s safety and soundness mission, and I assume the FDIC made that assessment before joining.**

12. Banking consolidation and concentration harms local communities. President Biden has called for a plan to strengthen bank merger guidelines in his Executive Order on

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Competition. Similarly, the Fed, OCC, and FDIC have raised concerns about domestic, systemically important banks. What are your views on strengthening the bank merger guidelines and to look at these mega mergers more closely to ensure they work for Main Street?

**By law, the FDIC must consider certain statutory factors in connection with a merger approval, including the risk to the stability of the United States banking or financial system. This financial stability consideration was added by the Dodd-Frank Act, and I understand there has not been a comprehensive review of the bank merger guidelines since it was added. While I cannot prejudge the matter given the FDIC’s request for information on this matter as part of an expected rulemaking, I look forward to reviewing the bank merger guidelines, including with respect to the financial stability consideration.**

13. For too long, the banking system only worked for Wall Street banks and individuals with significant means. What specific actions can the FDIC take to ensure all Americans have equal and fair access to affordable banking services?

**The FDIC should endeavor to have a banking system that works for all Americans. The FDIC and Congress should consider affirmative steps to ensure the banking system serves all Americans, whether through the Community Reinvestment Act (e.g., low-cost transactional accounts) and/or through minority depository institutions and community development financial institutions. The FDIC also has a critical role to play in enforcing the fair lending laws. Related to this, a faster payment system could significantly benefit many Americans.**

**More generally, ordinary Americans, especially low- and moderate-income and underserved consumers, are likely to endure the worst of any future financial crisis. To prevent future financial crises, and to ensure continued access to affordable banking services for all Americans, it is critical that the FDIC fully perform its mission to maintain stability and public confidence in the nation’s financial system by, among other things, examining and supervising financial institutions for safety and soundness and consumer protection.**

14. We have seen banks engage in unfair and deceptive consumer banking practices and pay fine after fine when they get caught. Banks treat these fines as a cost of doing business, not a business requirement.

a. What can the FDIC do to encourage better compliance with consumer regulations?

**If confirmed, I will do my part to ensure that the FDIC has supervisory and enforcement programs designed to ensure that FDIC-regulated banks comply with the consumer protection laws, including the prohibitions on unfair, deceptive, and abusive acts or practices. Section 8 of the Federal Deposit Insurance Act authorizes FDIC to issue various formal actions, including cease and desist orders and civil money penalties. The FDIC**

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**should use the full range of informal and formal enforcement actions as appropriate to that end.**

- b. What is needed to make the cultural shift away from viewing consumer compliance as a cost of doing business, toward the mindset that consumer compliance is a business requirement for all banking organizations?

**If confirmed, I would work with the Chair and FDIC staff to assess opportunities to improve the effectiveness of the FDIC’s supervisory and enforcement programs.**

- 15. Too often, banks treat all fines as a cost of doing business. In general, do you agree that the FDIC should take strong enforcement actions with significant penalties when banks violate the law? Do you view enforcement and penalties as a deterrent?

**Enforcement actions and civil money penalties should be appropriately calibrated to correct unsafe and unsound practices or failures to comply with the law and otherwise deter these practices and failures. The FDIC has a policy that governs the assessment of civil money penalties. If confirmed, I would be interested in working with the Chair and FDIC staff to assess that policy and any opportunities to enhance the policy or its implementation.**

- 16. It is widely acknowledged the regulatory enhancements since the great recession have mitigated the risk of too-big-to-fail (TBTF). The FDIC along with the Fed and OCC plan to implement the final set of Basel III standards.

- a. What gaps remain in the framework to prevent TBTF?

**Changes since the 2008 financial crisis have improved the resiliency of the financial system. Regulatory capital requirements are critical to preventing TBTF. Also critical to preventing TBTF is a credible resolution framework. Preventing TBTF remains a work in progress, as adjustments to the regulatory framework and ongoing monitoring will be necessary to identify and mitigate changes in the financial system that might pose new TBTF risks.**

- b. What are the capital or supervisory enhancements you would like to consider as part of this implementation?

**If confirmed, and without prejudging any specific proposals, I would look forward to working with the Chair and FDIC staff to identify opportunities to improve the FDIC’s regulatory capital requirements and the resolution framework.**

- 17. Please provide detailed responses to the following questions related to crypto and digital assets:

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- a. What is your current outlook on the role of crypto assets in the banking system?

**The banking regulators have taken a cautious approach to the role of crypto assets in the banking system, and based on the public statements of agency leadership, it appears that cautious approach should be expected to continue.**

- b. What prerequisites are necessary for the banking system, and for individual banks, to engage in the crypto market place?

**As with other bank activities, any crypto-related activities of an FDIC-regulated bank should be performed in a safe and sound manner, in compliance with consumer protection and other laws, and not pose a risk to financial stability.**

- c. What investor and consumer protection challenges must be addressed with the banking of crypto assets?

**The market regulators continue to have a role in addressing investor protections. Any crypto-related activities of an FDIC-regulated bank should be performed in compliance with consumer protection and other laws.**

18. Please provide detailed responses to the following questions related to cybersecurity:

- a. What type of risk does cybersecurity present to individual banks, bank customers, and the banking system as a whole?

**As detailed in the last annual report by the Financial Stability Oversight Council, the financial sector continues to face cybersecurity risks. These include ransomware and other malware attacks, denial of service attacks, data breaches, among other cybersecurity-related risks. These events could interrupt the services of key financial institutions. These events could also expose sensitive personal information to unauthorized access. More generally, these events could pose a risk to the safety and soundness of FDIC-regulated banks that are subject to a cybersecurity attack.**

- b. Are there tools in the FDIC’s toolkit sufficient to respond to this type of risk?

**The FDIC conducts examinations of the information security and cybersecurity risk management practices of FDIC-regulated banks. It has also issued guidelines on how FDIC-regulated banks should manage their third-party relationships, including the information security and cybersecurity risks that can be posed by those relationships. The FDIC also participates in the Federal Financial Institutions Examination Council, which plays a role in coordinating examinations of technology service providers. If confirmed, I would look forward to working with the Chair and FDIC staff to assess whether the FDIC’s toolkit is sufficient to manage this type of risk.**

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19. Are there any Dodd-Frank regulations applicable to FDIC that you believe need to be revisited or reexamined? If your answer is “yes,” please explain in detail what regulation(s) and why you believe the regulation needs to be revisited or reexamined.

**The Acting Chair has suggested that the FDIC and the other federal banking agencies expect to propose amendments to the regulatory capital requirements based on the Basel III “End Game” framework. Recently the FDIC and the Federal Reserve Board issued an advance notice of proposed rulemaking on the resolution-related resource requirements for large banking organizations. If confirmed, I would look forward to working with the Chair and FDIC staff on these efforts.**

20. Do you agree that illegal or discriminatory practices at a bank should be a basis to downgrade a bank’s Community Reinvestment Act (CRA) rating?

**Without prejudging the issue in light of the ongoing CRA rulemaking that is considering how discriminatory and other illegal practices affect a CRA rating, I understand the FDIC generally has considered discriminatory or other illegal practices in assessing CRA compliance.**

21. In 2021, then-Chair McWilliams blocked the majority of the FDIC Board from voting to review the regulatory process for bank mergers. After attempts to work with then-Chair McWilliams, board members raised the request for information (RFI) by notational vote, which is expressly permitted by the FDIC’s bylaws. Then-Chair McWilliams ruled out of order the request to have the notational vote recorded in the minutes.
- a. Do the FDIC bylaws provide the Chair with the authority to prevent the majority of the Board from presenting items for a vote? If yes, please provide the statutory or legal basis you relied on to reach this conclusion.

**Article IV, Section 6(a) of the current FDIC bylaws provides that “[s]uch [regular] meetings shall consider such item(s) of business that the Chairperson shall direct, or such item(s) that another member of the Board of Directors may request not later than ten days prior to the date of such meeting to facilitate compliance with the Government in the Sunshine Act.” (emphasis added). With respect to special meetings, Article IV, Section 6(b) also provides “[s]uch [special] meetings shall consider such item(s) of business that the Chairperson shall direct, or such item(s) that another member of the Board of Directors may request . . .” (emphasis added). Similarly, with respect to notational votes, Article IV, Section 6(g) provides “[n]otwithstanding the foregoing, any one member of the Board of Directors may provide written notice to the Executive Secretary of his or her request to transact said business at a meeting of the Board of Directors, and such business shall be considered at the next regular meeting unless a special meeting is requested.”**

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22. Will you commit that, if confirmed, you will respond in a timely manner and fully comply with all information requests from me? Please answer “yes” or “no.” If your answer is “no,” please explain.

**Yes, I will comply with information requests from you to the extent permitted by FDIC policies and applicable law.**

23. Please describe with particularity the process by which you answered these questions for the record, including identifying who assisted you in answering these questions along with a brief description of their assistance.

**These responses are my own. In connection with finalization of these responses, the White House, the FDIC, and congressional staff reviewed the responses.**

**Questions for Mr. Jonathan McKernan, of Tennessee, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation, from Senator Catherine Cortez Masto:**

*Financial Inclusion*

Nine percent of all Latinos were unbanked, down from 12% in 2019 but still higher than the national average of 4.5%. Eleven percent of all Black Americans were unbanked.

1. What should the FDIC do to support an increase in access to banking services for Latino and Hispanic families, especially those earning under \$50,000/year?

**If confirmed, I would work with the Chair, FDIC staff, and key external stakeholders to understand and facilitate the FDIC’s efforts already underway to increase access to banking services for Latino and Hispanic families and also to potentially identify new opportunities to advance this goal. In particular, I would be interested in exploring the opportunities for the Community Reinvestment Act to better foster financial inclusion and the role of minority depository institutions and community development financial institutions.**

2. What should the FDIC do to support an increase in access to banking services for Southeast Asian, Indigenous and Pacific Islander families, especially those earning under \$50,000/year?

**If confirmed, I would work with the Chair, FDIC staff, and key external stakeholders to understand and facilitate the FDIC’s current efforts to increase access to banking services for Southeast Asian, Indigenous, and Pacific Islander families and also to identify new opportunities to advance this goal. In particular, I would be interested in exploring the opportunities for the Community Reinvestment Act to better foster financial inclusion.**

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3. What should the FDIC do to support an increase in access to banking services for Black and African American families, especially those earning under \$50,000/year?

**If confirmed, I would work with the Chair, FDIC staff, and key external stakeholders to understand and facilitate the FDIC’s efforts already underway to increase access to banking services for Black and African American families and also to potentially identify new opportunities to advance this goal. In particular, I would be interested in exploring the opportunities for the Community Reinvestment Act to better foster financial inclusion and the role of minority depository institutions and community development financial institutions.**

4. How will you use your position on the FDIC Board to advance bank access parity, particularly for immigrant and non-English speaking communities?

**In addition to the approach and initial focus areas described above, if confirmed, I would be eager to work with the Chair, FDIC staff, and key external stakeholders to improve on existing outreach and financial literacy efforts already underway at the FDIC and potentially identify new opportunities to advance bank access parity.**

5. How will you ensure that FDIC institutions provide assistance or service to English-speaking customers who struggle with literacy, particularly those who may be experiencing adult illiteracy?

**If confirmed, I would be committed to doing my part to ensure that the FDIC has supervisory and enforcement programs designed to ensure that FDIC-regulated banks comply with the law, including those requirements with respect to assistance or service to English-speaking customers who struggle with literacy.**

*Third-Party Service Providers*

6. Do you agree with Chair Gruenberg’s statement that third parties which offer services on behalf of an FDIC-regulated entity, should be regulated as if that entity is providing that service itself and bear the compliance responsibility?

**According to FDIC guidance, “[a]n institution’s board of directors and senior management are ultimately responsible for managing activities conducted through third-party relationships, and identifying and controlling the risks arising from such relationships, to the same extent as if the activity were handled within the institution.”<sup>1</sup> I agree with this regulatory expectation. Perhaps notably, proposed interagency guidance also provides that “whether a banking organization conducts activities directly or through a third party, the banking organization must conduct the activities in a safe and sound manner and**

<sup>1</sup> FIL-44-2008, “Guidance for Managing Third-Party Risk” (June 6, 2008).

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consistent with applicable laws and regulations, including those designed to protect consumers.”<sup>2</sup>

7. If confirmed, how will you increase our understanding and awareness of the frequency of cyber incidents among third-party service providers utilized by FDIC member institutions?

**On November 23, 2021, the FDIC, together with the OCC and the Federal Reserve Board, finalized a joint rule to establish computer-security incident notification requirements for banking organizations and their bank service providers.<sup>3</sup> According to the preamble, “[t]he final rule also requires a bank service provider to notify each affected banking organization customer as soon as possible when the bank service provider determines that it has experienced a computer-security incident that has caused, or is reasonably likely to cause, a material service disruption or degradation for four or more hours.”<sup>4</sup> If confirmed, I will be committed to doing my part to ensure the FDIC has supervisory and enforcement programs designed to ensure that FDIC-regulated banks comply with the law, including this new rule and the other existing requirements governing third-party relationships.**

8. How will you ensure that third parties contracted for work with non-English speaking or low-income communities by FDIC member institutions meet statutory requirements for fair access?

**If confirmed, I will be committed to doing my part to ensure the FDIC has supervisory and enforcement programs designed to ensure that FDIC-regulated banks comply with the law, including statutory requirements for fair access. As discussed above, “[a]n institution’s board of directors and senior management are ultimately responsible for managing activities conducted through third-party relationships, and identifying and controlling the risks arising from such relationships, to the same extent as if the activity were handled within the institution.”**

*Digital Access*

9. How can FDIC members help bridge the digital divide, which disproportionately blocks low-income consumers from accessing online depository services?

**If confirmed, I would work with the Chair, FDIC staff, and key external stakeholders to understand and facilitate the FDIC’s current efforts to increase access to banking services for unbanked and underserved consumers and also to identify new opportunities to advance this goal. I look forward to reviewing opportunities for the rule implementing the Community Reinvestment Act to better foster financial inclusion. Specifically with respect**

<sup>2</sup> *Proposed Interagency Guidance on Third-Party Relationships*, 86 Fed. Reg. 38,182, 38,184 (Jul. 19, 2021).

<sup>3</sup> *Computer-Security Incident Notification Requirements*, 86 Fed. Reg. 66,424 (Nov. 23, 2021) (codified at 12 C.F.R. pt. 304, subpt. C).

<sup>4</sup> *Id.*

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**to the digital divide, I would be eager to discuss with FDIC staff and stakeholders opportunities for FDIC-regulated banks to help bridge that divide.**

10. If confirmed, what role would you play in promoting the FDIC’s outreach to young people through digital means to educate them on the FDIC and financial literacy opportunities?

**If confirmed, I would work with the Chair, FDIC staff, and key external stakeholders to understand and facilitate the FDIC’s current efforts to increase financial literacy and also to identify new opportunities to advance this goal.**

*Housing*

11. Do you agree with the research that finds that appraisal bias is a systemic and longstanding problem in the housing market?

**Appraisal bias is an important policy issue that merits careful and continued study by academics and regulators. Although I am not an expert on this topic, I am aware that there is research that has concluded that appraisal bias is a continuing problem in the housing market. If confirmed, I would continue to follow the emerging research on appraisal bias and seek the input of FDIC staff and external stakeholders on this issue.**

12. If confirmed, what steps will you take to support special purpose credit programs and other mortgage initiatives to reduce the Black/Latino-white racial homeownership gap?

**If confirmed, I would work with the Chair, FDIC staff, and key external stakeholders to identify and address obstacles to, and to otherwise explore incentives for, FDIC-regulated banks to safely and soundly expand responsible access to mortgage credit for Black, Latino, and other historically underserved borrowers. According to the Urban Institute, the white homeownership rate is 30 percentage points greater than the Black homeownership rate, and that gap is actually wider now than in 1960, when housing discrimination was still legal. The white homeownership rate is also 24 percentage points greater than the Hispanic homeownership rate. As with other historically underserved consumers, if confirmed, I would work to understand and facilitate the FDIC’s current efforts to increase responsible access to mortgage access for Black and Latino families and also to identify new opportunities to advance this goal. I look forward to reviewing opportunities for the Community Reinvestment Act to better foster access to responsible mortgage credit. Special purpose credit programs also could pose other opportunities for FDIC-regulated banks.**

13. Recent increases in interest rates mean that mortgage financing costs will be challenging for aspirant homeowners in the short run. If confirmed, how will you work to promote affordable mortgages, given the macroeconomic pressures? Do you see a role for the FDIC to enable lenders to use mortgage credit certificates for some loans?

**The recent significant increases in interest rates, together with the recent significant increases in house prices, have made homeownership significantly more expensive for first-**

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time and other homeowners. I have a longstanding interest in housing issues, and if confirmed, I would be eager to work with the Chair, FDIC staff, and key external stakeholders to identify and address obstacles to, and to otherwise explore the role of, FDIC-regulated banks to safely and soundly expand responsible access to mortgage credit for underserved borrowers. Ultimately, increases in housing supply likely will have an important role to play in reducing the cost of homeownership. I would also be interested in reviewing opportunities to improve the ability of FDIC-regulated banks to increase the construction and other financing available to build new housing stock.

*Risk*

14. What are some of the risks in the non-bank sector that you think pose risks to the financial sector, especially to FDIC-regulated entities?

Credit extended by FDIC-regulated banks to non-banks, as well as other forms of interconnectedness, could pose credit, operational, and other risks to FDIC-regulated banks. Third-party relationships between banks and non-bank partners also continue to pose risk to FDIC-regulated banks, particularly with respect to cybersecurity and compliance risk.

15. How should the FDIC mitigate those risks for its regulated banks?

With respect to credit and other connections with the non-bank sectors, the FDIC should ensure that FDIC-regulated banks are appropriately capitalized, maintain appropriate liquidity, and otherwise operate in a safe and sound manner. The FDIC should also continue to participate in the Financial Stability Oversight Council’s efforts to identify and monitor potential risks to the banking system.

With respect to third-party risks, the FDIC should ensure that it has supervisory and enforcement programs designed to ensure that FDIC-regulated banks comply with the FDIC’s third-party risk management guidelines, with a particular focus on the management of the cybersecurity and compliance risks posed by bank partnerships with financial technology and other non-bank companies. The FDIC should also continue to participate in the Federal Financial Institutions Examination Council, including its efforts to coordinate examinations of technology service providers and share information on emerging cybersecurity risks.

16. What risks in the non-bank sector do you think pose risks to banks regulated by the FDIC?

I understand that there has been ongoing scrutiny of the capitalization of non-bank borrowers and other counterparties to FDIC-regulated banks, and that the insolvency of large non-bank counterparties could potentially pose meaningful credit risks to FDIC-regulated banks. Cybersecurity-related risks in the non-bank sector also might pose risks to FDIC-regulated banks, in particular through bank partnerships with non-banks.

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17. If confirmed, how will you ensure that the financial institutions regulated by the FDIC are resilient to climate disasters such as hurricanes, floods and droughts?

**If confirmed, I will do my part to ensure that the FDIC has supervisory and enforcement programs designed to ensure that FDIC-regulated banks operate in a safe and sound manner and in particular that FDIC-regulated banks manage their risks, including those risks posed by climate change, by implementing policies and procedures to identify, assess, mitigate, monitor, and report on those risks. According to the Acting Chair, “the FDIC remains in the early stages of addressing climate-related financial risk,”<sup>5</sup> and if confirmed, I would look forward to working with the Chair and FDIC staff to understand this effort and the ways in which I might contribute.**

*Federal Home Loan Banks*

18. How does FDIC oversight align with the collateral and advances FDIC-regulated banks receive from the Federal Home Loan Banks?

**The FDIC should continue to monitor through its supervisory program the role of Federal Home Loan Bank advances in funding FDIC-regulated banks, including the management of any maturity mismatches and rollover risks. By statute, any security interest granted by a member to a Federal Home Loan Bank is generally entitled to priority over the claims and rights of any other party, including any receiver or conservator. The FDIC should also continue to assess the implications of this statutory lien in connection with its resolution planning activities.**

19. Do you think that the Federal Home Loan Banks should provide a lender of last resort role to banks not meeting capital or other supervisory requirements?

**FHFA’s regulations generally restrict the ability of a Federal Home Loan Bank from making a new advance to a member without positive tangible capital unless the member’s federal bank regulator requests it make such advance.<sup>6</sup> The Acting Chair’s answers to questions posed by Rep. David Scott in the November 16, 2022 House Financial Services Committee hearing suggest that the FDIC is working with FHFA to determine an approach to these waiver requests in light of the unrealized losses on some banks’ investment portfolios. If confirmed, I would be eager to work with the Chair and FDIC staff to understand the options and policy considerations relating to this issue.**

20. If confirmed, will you ensure that banks do not use Federal Home Loan Bank advances to avoid risk management challenges?

<sup>5</sup> *Remarks by Acting Chairman Martin J. Gruenberg*, before the House Financial Services Committee on Oversight of Prudential Regulators: Ensuring the Safety, Soundness, Diversity, and Accountability of Depository Institutions (Nov. 16, 2022).

<sup>6</sup> 12 C.F.R. 1266.4.

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**If confirmed, I would do my part to ensure that the FDIC has supervisory and enforcement programs designed to ensure that FDIC-regulated banks operate in a safe and sound manner and in compliance with the law. Advances should not be an avenue for not remediating unsafe and unsound practices.**

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**Questions for Mr. Jonathan McKernan, of Tennessee, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation, from Senator Tim Scott:**

Affordable access to capital and financial inclusion is crucial for entrepreneurs and small businesses to succeed in starting and growing their businesses. However, many entrepreneurs and small firms, especially women, minorities, and those living in rural areas, struggle to access traditional banking services.

Bank-fintech partnerships have allowed banks to reach these underrepresented population segments and increase customer engagement. Furthermore, to encourage consumer-beneficial innovation, regulators should support innovations in consumer credit underwriting designed to increase credit visibility, reduce bias, and expand credit to underserved consumers.

A number of financial technology firms are on the cutting edge of financial innovation by using alternative data technology, automated credit underwriting, artificial intelligence, and more to achieve increased financial inclusion and expanded access to affordable credit for creditworthy businesses and entrepreneurs.

*Please answer the following with specificity:*

1. Do you believe regulators should support and encourage responsible bank-fintech partnerships as they work to implement new technologies that increase financial inclusion and access to credit?

**Financial technology and other partners can play an important role in helping banks to realize the potential for responsible innovation to increase financial inclusion and access to credit. Innovation can help achieve these ends by, for example, enhancing banks’ ability to monitor compliance with consumer protection laws, reducing the cost of providing lending and other banking services to underserved and other consumers, developing new ways to identify creditworthy underserved consumers, and adapting banking services to the needs of underserved consumers. It is therefore important that the FDIC take an appropriately tailored approach to bank-financial technology partnerships that are performed in a safe and sound manner and in compliance with law.**

2. As you review the bank-fintech partnership model, how will you minimize unnecessary regulatory hurdles and ensure that any regulatory actions encourage rather than stifle financial innovation and is commensurate with the actual risk the partnership poses?

**The FDIC should endeavor to achieve its safety and soundness mission efficiently and fairly. To foster efficiency, regulatory actions should be commensurate with the risk of the bank activity in question, striking an appropriate balance between the costs and benefits of the underlying requirements and restrictions. To foster fairness, regulation should be transparent and consistently enforced. These same principles should apply to bank-fintech partnerships, and in particular the regulatory framework governing these partnerships**

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**should be tailored to the underlying risks and the implementing requirements and restrictions should be transparent and consistently enforced.**

3. One of my biggest priorities is reducing the number of unbanked and underserved households in this country and getting more Americans into the traditional banking system.

According to a 2021 FDIC survey, nearly six million U.S. households were unbanked. We can, and we must, do more to expand opportunities for these individuals to interact with the financial mainstream.

If confirmed, what are your plans to get more of the unbanked and underserved populations into the more traditional, regulated banking system?

**If confirmed, I would work with the Chair and FDIC staff to understand and facilitate the FDIC’s current efforts to get more of the unbanked and underserved populations into the more traditional, regulated banking system and also to identify new opportunities to advance this goal. Initially, I intend to focus on the potential for responsible innovation to help achieve this goal, as well as on opportunities for the rule implementing the Community Reinvestment Act to better foster financial inclusion of the unbanked and underserved households.**

4. Will you commit to effectively engaging with innovative banks and fintech companies to properly understand and oversee innovations in financial services – especially those that may help usher Americans stuck on the sidelines into the financial mainstream?

**If confirmed, I commit to engaging with innovative banks and fintech companies to understand innovations in financial services and whether the FDIC appropriately regulates banks’ related activities, particularly those activities that might foster financial inclusion.**

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Questions for Mr. Jonathan McKernan, of Tennessee, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation, from Senator Jon Tester:

*Community Banks*

1. What more can the FDIC, or Congress, do to make sure that community banks can serve Main Street businesses, workers, and families in their communities?

Community banks play a critical role in serving Main Street businesses, workers, and families. Community banks tend to have a better understanding of local business conditions. Community banks tend to be well-suited to more quickly and efficiently assessing the creditworthiness of local businesses and farms, with whom they have often had longstanding relationships. Community banks generally continued to support their communities during the 2008 financial crisis, perhaps even more so than the largest banks. And, perhaps most importantly, community banks tend to have an enduring interest in the long-term success of their community, not the least because the owners, management, and employees often live in that community. The FDIC is the primary federal banking regulator for many of the nation’s community banks, and so these are important considerations for any member of the FDIC board of directors to keep in mind.

With those considerations in mind, the FDIC should endeavor to remove obstacles to, and otherwise facilitate, the efforts of community banks to serve Main Street businesses, workers, and families. The FDIC’s regulatory framework for community banks should be tailored to the unique aspects of their businesses, including their ability to make safe and sound underwriting decisions based in part on their longstanding relationships with many of their customers. The FDIC’s regulatory framework should also acknowledge that community banks generally did not engage in the business practices that led to the financial distress of some of the largest banks during the 2008 financial crisis.

More specifically, the FDIC should explore opportunities to remove regulatory impediments to community banks’ businesses in mortgage, small business, and agricultural lending, while protecting consumers. Also, to ensure that community banking remains a vibrant sector, the FDIC should also explore opportunities to facilitate the chartering of new community banks.

2. How will you ensure that the financial institutions you regulate continue to serve rural and frontier communities? And that there is access in Indian Country?

As discussed above, community banks play a critical role in serving Main Street businesses, workers, and families. This is particularly the case for rural and frontier communities, including in Indian Country. If confirmed, I would be eager to work with the Chair, FDIC staff, and external stakeholders to remove obstacles to, and otherwise facilitate, the efforts of community and other banks to serve rural and frontier communities, including in Indian Country. As also discussed above, I would be interested to explore opportunities to remove regulatory impediments to FDIC-regulated banks’ business in mortgage, small business,

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**and agricultural lending in these communities and also opportunities to facilitate the chartering of new community banks in these communities.**

3. Is there more that should be done legislatively or through regulation to address branch closures?

**The question of continuing branch closures is a difficult question, in part due to the market pressures driving this dynamic. If confirmed, I would be eager to work with the Chair, FDIC staff, and external stakeholders to identify and assess options to facilitate the presence of branches in rural America and other communities. For example, the rule implementing the Community Reinvestment Act could potentially play a role in fostering branch presence in rural, Indian Country, and other underserved communities.**

4. What do you see as the most pressing challenges for banks, especially community banks, in the coming years?

**Cybersecurity risk continues to pose challenges for all banks. Geopolitical risks also increasingly pose new and hard-to-assess challenges for the banking system. For community banks, the risks associated with the prospects of significant economic uncertainty could be among the more pressing challenges. A rising interest rate environment could lead to increasing losses on their investment portfolios. Varying local business conditions could lead to heightened credit risk on some banking exposures.**

5. Generally, what is your view and approach to the regulatory responsibilities of members of the Federal Deposit Insurance Corporation Board?

**First and foremost, members of the FDIC board should do their part to ensure the FDIC fully performs its mission to maintain stability and public confidence in the nation’s financial system by, among other things, examining and supervising financial institutions for safety and soundness and consumer protection. Ordinary Americans, especially low- and moderate-income and underserved consumers, are likely to endure the worst of any future financial crisis. To avoid that outcome, it is critical the FDIC fully perform its safety and soundness mission.**

*Lending Decisions*

6. In your opinion, is it the role of the FDIC, or any other federal financial regulators, to discourage banks from lending to coal, oil, and gas manufacturers? Or other industries?

**No, that is not the role of the FDIC or any other federal financial regulators.**

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*Risks to Economic Stability*

7. How will you work to address cyber threats? How will you evaluate when new risks are arising and how to address them?

**Cybersecurity risk continues to be a significant risk for banks. Information sharing and coordination with law enforcement will be critical to managing this risk. To that end, the FDIC should continue to participate in the Federal Financial Institution Examination Council, including its coordination of the examinations of technology service providers and its sharing of cybersecurity risk-related information. More generally, I would look forward to engaging with the Chair, FDIC staff, and external stakeholders on existing and new measures to identify, assess, and mitigate cybersecurity risks.**

*Innovation*

As new financial products and technologies are developed and existing products evolve federal financial regulators will have opportunities to shape the ecosystem around cryptocurrencies and other “FinTech” products and companies, and as regulators have a responsibility to provide adequate protections for our financial system and consumers.

8. What is your view of the current regulation and oversight in this space? What do you believe works well and what would you change at the FDIC?

**According to FDIC guidance, “[a]n institution’s board of directors and senior management are ultimately responsible for managing activities conducted through third-party relationships, and identifying and controlling the risks arising from such relationships, to the same extent as if the activity were handled within the institution.”<sup>7</sup> I agree with this regulatory expectation. Perhaps notably, proposed interagency guidance also provides that “whether a banking organization conducts activities directly or through a third party, the banking organization must conduct the activities in a safe and sound manner and consistent with applicable laws and regulations, including those designed to protect consumers.”<sup>8</sup> If confirmed, I would look forward to engaging with the Chairman on opportunities to refine the FDIC’s regulation of third-party relationships.**

<sup>7</sup> FIL-44-2008, “Guidance for Managing Third-Party Risk” (June 6, 2008).

<sup>8</sup> *Proposed Interagency Guidance on Third-Party Relationships*, 86 Fed. Reg. 38,182, 38,184 (Jul. 19, 2021).

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**Questions for Mr. Jonathan McKernan, of Tennessee, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation, from Senator Elizabeth Warren:**

1. The Department of Justice’s Office of Legal Counsel issued a slip opinion on June 29, 2022 in which it concluded that “The Chairperson of the Federal Deposit Insurance Corporation does not have the authority to prevent a majority of the FDIC Board from presenting items to the Board for a vote and decision.”<sup>9</sup> Do you agree with the Office of Legal Counsel’s conclusion?

**In my view, the Office of Legal Counsel’s (OLC) conclusion is consistent with the recently revised FDIC bylaws. Under past FDIC bylaws, there may have been different interpretations, as noted by the OLC’s opinion,<sup>10</sup> with past custom and practice potentially relevant to the construction of those bylaws.**

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<sup>9</sup> Department of Justice, “Authority of a Majority of the FDIC Board to Present Items for Vote and Decision,” July 29, 2022, <https://www.justice.gov/olc/opinion/authority-majority-fdic-board-present-items-vote-and-decision>

<sup>10</sup> The OLC opinion stated: “We note that the current Board majority’s understanding of its Bylaws may not be the only possible interpretation.”

Senator Reverend Raphael Warnock (D-GA)  
 Questions for the Record  
 Senate Committee Banking, Housing, & Urban Affairs  
 Hearing on “Nomination Hearing for Martin Gruenberg, Travis Hill, Jonathan McKernan,  
 and Kimberly Ann McClain”  
 November 30, 2022

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Mr. McKernan

1. With the rise of fintech and other online lending services, it is easier than ever before to access financial services and products, especially small-dollar loans. I believe under the correct regulatory regime, this can be beneficial to Georgians. If confirmed, how would you approach both encouraging responsible small-dollar lending while also safely monitoring firms within the FDIC’s purview?

**Financial technology and other partners can play an important role in helping banks to realize the potential for responsible innovation to increase financial inclusion and access to credit. Innovation can help achieve these ends by, for example, enhancing banks’ ability to monitor compliance with the consumer protection laws, reducing the cost of providing lending and other banking services to underserved and other consumers, developing new ways to identify creditworthy underserved consumers, and adapting banking services to the needs of underserved consumers.**

**Innovation, in particular information systems and other technology to reduce the cost of providing lending and other banking services, could facilitate efforts of FDIC-regulated banks to provide responsible small-dollar lending. Enhancements to the regulatory framework, for example, the rule implementing the Community Reinvestment Act, might also have a role to play in facilitating efforts of FDIC-regulated banks to provide small-dollar lending.**

**I understand that the FDIC and the other federal banking regulators have in recent years explored actions that the agencies could take to encourage banks to offer small-dollar loans. If confirmed, I would be interested in understanding whether the 2020 interagency principles for small-dollar lending are achieving the intended results. If confirmed, I also would be interested in working with the Chair, FDIC staff, and external stakeholders to identify obstacles to, and otherwise facilitate, the efforts of FDIC-regulated banks to provide responsible access to small-dollar lending in a safe and sound manner and in compliance with the consumer protection and other laws.**

2. Is it disproportionately harder to earn the trust of these services in rural communities? How can the FDIC play a role in responsibly promoting sound financial options where lending gaps exist?

**Consumers’ trust in financial services depends in large part on financial institutions treating them fairly. To that end, the FDIC has an important role to play in ensuring that FDIC-regulated banks provide banking services in compliance with the consumer protection laws. More generally, the FDIC can play a role in responsibly promoting sound**

financial options by ensuring that the regulatory framework does not unduly impose impediments to efforts to provide financial services where lending gaps exist. There might also be unique roles for minority depository institutions, community development financial institutions, and the Community Reinvestment Act in promoting financial options where lending gaps exist.

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**Questions for Dr. Kimberly Ann McClain, of Maryland, to be an Assistant Secretary of Housing and Urban Development, from Chairman Sherrod Brown:**

1. Where have you excelled in past positions in attracting, hiring, and promoting people of color in positions in your organization/s? Where might there be room for improvement?

Organizations are most successful when all voices are heard. Throughout my career in the private and public sectors I have worked with affinity groups, volunteer organizations and as a mentor to ensure that people of color have the opportunity to grow and thrive in their careers. While at Accenture Federal Services, in addition to my primary areas of responsibility, I led the Military, Work-Life Balance and Veterans affinity groups by working alongside peers and leaders to connect with and mentor people of color and Veterans. During eight years at the Department of Defense, I worked alongside U.S. allies in Africa and across Latin America to develop the cultural competencies, organizational capacities and capabilities of the U.S. defense workforce and international partners. I also recruited and selected diverse candidates to serve as foreign area officers who represent the United States abroad.

Recruiting and maintaining a qualified workforce that includes Black, Indigenous and people of color (BIPOC) require deliberate efforts on behalf of organizational leadership and human resource professionals. If confirmed, I would work with my colleagues to ensure all qualified candidates are considered for roles on my team.

2. What specific measures will you use to evaluate the success of HUD in understanding and addressing the needs of Black, Indigenous and people of color (BIPOC)? And, will you work with the Secretary to keep Congress apprised, as appropriate, on the progress being made on these measures?

With extensive experience serving in various leadership roles within federal government, I value developing measurable goals and employing a data-informed decision-making approach to governance. HUD's research and evaluation designs position the Department to attribute successes on a variety of outcomes like housing stability and increased household income to specific policies and programs that specifically target those outcomes. As a proponent of rigorous measurement and evaluation methodologies like these that provide the best evidence of success, I strongly support this approach. Consequently, if confirmed, I will work to partner with HUD's Office of Policy Development and Research and their program office partners (i.e., PIH, CPD, Housing, and FHOO) to ensure that I am kept fully apprised of the research being conducted in these and related areas of interest. Lastly, I will work with HUD's leadership team to ensure that Congress, is kept up-to-date on key research findings on these and other topics of interest.

3. What is your plan for creating an inclusive working environment for employees within your office?

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Throughout my career in the private and public sectors I have worked to ensure that each of my employees knew that they belonged and were valued. Creating such an environment requires understanding that everyone is an individual, with unique personalities and how they wished to be perceived. Because building an inclusive workplace environment starts at the top, in my roles at Accenture, the Department of Defense, and Department of Veterans Affairs, I hired diverse leaders with diverse backgrounds to ensure that inclusivity was a part of the leadership DNA. Another way that I created inclusive organizations was ensuring that my organizations’ calendars included holy days, events or festivals for the countries, cultures, religions of the people on my team. Additionally, I set aside time at the beginning of each day to celebrate the big and small successes of the team; whether they were personal or professional achievements or organizational milestones. Finally, I encouraged my team to celebrate each other’s successes. I rewarded and provided feedback to my employees based upon tangible and intangible efforts. This ensured that everyone was rewarded for their contributions to the organization.

If confirmed, I will continue ensuring that my organization has a diverse and inclusive environment where people not only have a seat at the decision-making table, but that their voices are heard and perspectives respected.

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**Questions for Dr. Kimberly Ann McClain, of Maryland, to be an Assistant Secretary of Housing and Urban Development, from Ranking Member Patrick J. Toomey:**

*Congressional oversight*

1. Please provide your philosophy on how the Office of the Assistant Secretary for Congressional and Intergovernmental Relations will approach and respond to Congressional information requests (both for documentary information and oral testimony), if you are confirmed.

I recognize that Congress plays an important oversight role regarding executive branch activities, and I pledge to thoughtfully consider all Congressional information requests, recognizing the importance of transparency in government. If confirmed, I pledge to work through the accommodations process to comply with Congressional requests for information consistent with the constitutional and statutory obligations of the executive branch.

2. If confirmed, do you intend to respond to information requests differently depending on who is making the Congressional information request (whether it’s the chair of the Congressional committee, the ranking member, or another member of Congress)? Please answer “yes” or “no.” If your answer is “yes,” please explain.

I recognize that Congress plays an important oversight role regarding executive branch activities, and I pledge to thoughtfully address all Congressional information requests, recognizing the importance of transparency in government. If confirmed, I pledge to work to comply with Congressional requests for information consistent with the constitutional and statutory obligations of the executive branch.

3. Will you commit that, if confirmed, you will timely respond to and fully comply with all information requests from me? Please answer “yes” or “no.” If your answer is “no,” please explain.

Yes.

4. Will you commit that, if confirmed, you will make yourself and any other Office of the Assistant Secretary for Congressional and Intergovernmental Relations employee expeditiously available to provide oral testimony (including but not limited to briefings, hearings, and transcribed interviews) to the Committee on any matter within its jurisdiction, upon the request of either the Chairman or Ranking Member? Please answer “yes” or “no.” If your answer is “no,” please explain why.

I recognize that oral testimony plays an important role in Congress’ important oversight responsibilities regarding executive branch activities. If confirmed, I commit to brief or testify

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regarding Congressional requests consistent with the constitutional and statutory obligations of the executive branch.

5. Do you believe that the Office of the Assistant Secretary for Congressional and Intergovernmental Relations may assert any privileges or other legal justifications to withhold information (whether records or oral testimony) from Congress? Please answer “yes” or “no.”

My understanding is that any determination as to whether HUD has an applicable privilege or other justification to withhold information would be made by the Office of General Counsel. Should I be confirmed, and should such a question arise during my tenure, I would defer to the Office of General Counsel on whether the Office of the Assistant Secretary for Congressional and Intergovernmental Relations has any such privileges or other legal justifications.

6. If you answered “yes” to the preceding question, please list every such privilege or other legal justification and provide the legal basis for why you believe the Office of the Assistant Secretary for Congressional and Intergovernmental Relations may use such privilege or legal justification to withhold information from Congress.

N/A

7. In an effort to be open and transparent with Congress and the public, will you commit not to assert any such privilege or legal justification against Congress that you listed above? If not, why not? If so, please identify all such privileges or legal justifications that you will commit to not assert against Congress.

If confirmed, I commit to leading the Office of the Assistant Secretary for Congressional and Intergovernmental Relations with openness and transparency, consistent with applicable law and regulation. If confirmed, I would work with the Office of General Counsel to ensure that I am complying with any and all legal requirements.

8. What role does the Office of Congressional and Intergovernmental Relations have in responding to legal demands for information from Congress?

If confirmed, my responsibility as Assistant Secretary leading the Office of Congressional and Intergovernmental Relations would be to support HUD in its communication with Congress and with state and local governments. With respect to legal demands for information, HUD’s Office of General Counsel provides support to CIR in responding to Congressional inquiries on an as needed basis, including potential assertion of applicable privileges, obligations with respect to subpoenas, and process and procedure requirements.

9. How will you facilitate that role?

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If confirmed as Assistant Secretary for Congressional and Intergovernmental Relations I will facilitate HUD’s communications with Congress and State and local governments, consulting as appropriate with HUD’s Office of General Counsel to respond to legal demands for information from Congress.

*Communications with Congress*

10. In your current role as Deputy Assistant Secretary in the Office of Congressional and Legislative Affairs at the Department of Veterans Affairs, do you have periodic meetings or calls with staff from the House and Senate Committees on Veterans Affairs?

To ensure that the Office of Congressional and Legislative Affairs at the Department of Veterans Affairs has consistent, open, and transparent communications with partners in Congress, I meet weekly with House and Senate Committees on Veterans Affairs Committee staff.

11. Will you commit to making yourself available for similar periodic calls or meetings with Democratic and Republican staff from the House Financial Services and Senate Banking Committees?

Yes.

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**Questions for Dr. Kimberly Ann McClain, of Maryland, to be an Assistant Secretary of Housing and Urban Development, from Senator Catherine Cortez Masto:**

*State-level research on affordable housing investment*

The 116<sup>th</sup> and 117<sup>th</sup> Congress provided record levels of investment in housing – some to HUD, some to other agencies and some through the tax code.

1. Will you ensure that HUD’s Policy Development and Research office provides state-level information on the use of those funds for affordable housing by state to Senators?

This data could include the direct funding for appropriations by HUD, including the Housing Trust Fund, Treasury-managed programs like the Emergency Rental Assistance Program and Homeowners Assistance Fund, USDA’s rural housing programs, mortgage revenue bonds, mortgage credit certificates, the Low-Income Housing Tax Credit, New Markets Tax Credits and Opportunity Zones.<sup>1</sup>

I value transparency in how HUD makes its data available. If confirmed, I will work with the staff in HUD’s Office of Policy Development and Research to expand the data that are available to the public and to Members of Congress.

2. Specifically, if confirmed, will you ensure that HUD provides data on the number of households assisted from these investments as well as new affordable units produced and preserved?

If confirmed, I will work with the staff in HUD’s Office of Policy Development and Research to expand the data that are available beyond those data sets now available on huduser.gov.

3. If confirmed, will you ensure this data is accessible digitally?

HUD currently makes significant data available digitally online, and if confirmed I will work with HUD to continue to expand these offerings.

4. If confirmed, will you commit to providing data that utilizes a range of presentations such as maps, infographics, videos, etc.?

If confirmed, I will work with staff in HUD’s Office of Policy Development and Research to expand the data presentation formats that are available.

5. If confirmed, will you ensure that HUD provides information on how its programs benefited from sources provided to other agencies and through the tax code?

<sup>1</sup> [https://www.hud.gov/sites/dfiles/Main/documents/Factsheet\\_Housing\\_Provisions\\_American\\_Rescue\\_Plan\\_Act-2021.pdf](https://www.hud.gov/sites/dfiles/Main/documents/Factsheet_Housing_Provisions_American_Rescue_Plan_Act-2021.pdf)  
<https://www.huduser.gov/portal/Datasets/lihtc/LIHTC-2020-Tables.pdf>

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If confirmed, I would be happy to arrange a briefing with your staff on legal constraints on HUD’s ability to share tax data with other agencies.

6. If confirmed, will you ensure that HUD shares information on if, or how, limited HUD funding reduced the possible leverage for these funds?

If confirmed, I would tap the appropriate subject matter experts within HUD and arrange for them to brief your staff on this important subject.

7. If confirmed, will you ensure that HUD shares information on if, or how, limited research funding limits HUD’s ability to provide district and state-level data?

If confirmed, I would work with HUD staff to identify what research and information technology resources are needed to make more data available at district and state levels.

*Manufactured Housing Inclusion in Consolidated Plans*

In 2019, Congress required HUD include manufactured housing in consolidated plans.<sup>2</sup>

8. If confirmed, will you commit to briefing my staff within 60 days of your confirmation on the status of HUD’s implementation of this law?

Yes.

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<sup>2</sup> The Further Consolidated Appropriations Act of 2020, Public Law No. 116-94 (H.R. 1865)<sup>2</sup> directs the U.S. Department of Housing and Urban Development (HUD) to issue guidance for the inclusion of manufactured housing in states’ and local governments’ Consolidated Plans. The Joint Explanatory Statement to the government funding package states:

*The [2020 appropriations] agreement directs the Department to issue guidelines to jurisdictions on how to assess the potential inclusion of manufactured homes in a community’s comprehensive housing and affordability strategy and community development plans required under part 91 of title 24, Code of Federal Regulations.<sup>2</sup>*

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**Questions for Dr. Kimberly Ann McClain, of Maryland, to be an Assistant Secretary of Housing and Urban Development, from Senator Kyrsten Sinema:**

1. Dr. McClain, in considering your current experience as VA Deputy Assistant Secretary for Congressional Affairs, what new intergovernmental collaboration and coordination opportunities could be valuable between HUD and VA, should you be confirmed?

The Department of Veterans Affairs (VA) collaborates closely with the Department of Housing and Urban Development (HUD) to meet the housing needs of Veterans and their families. Additionally, HUD and VA serve on the United States Interagency Council on Homelessness (USICH), alongside leaders of 16 other agencies, with a mission focused on preventing and ending homelessness in America.

While the results of the January 2022 point in time count showed the biggest decrease in Veteran homelessness in more than five years, even one Veteran who experiences housing insecurity or homelessness is too many. To address Veteran housing insecurity and homelessness, HUD and VA can work together on several housing issues that impact Veterans and the American public at large. These include rural housing, meeting the unique needs of women and Native American Veterans (Native American Indians, Native Hawaiians and Pacific Islanders, Native Alaskans), and increasing homeownership among African American Veterans, a group with lower rates of home ownership than other segments of the population.

Additionally, through the Property Appraisal and Valuation Equity (PAVE) task force, HUD and VA have an opportunity to address overarching issues such as increasing homeownership among African American and Native American Veterans, access to affordable housing (purchasing and rental) and, racial and ethnic bias in home purchasing (e.g., home valuations, applications, grants, etc.). HUD can work with VA to increase the supply of affordable rental housing and homeownership available to Veterans and transitioning service members.

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**ADDITIONAL Questions for Dr. Kimberly Ann McClain, of Maryland, to be an Assistant Secretary of Housing and Urban Development, from Senator Tina Smith:**

1. Thank you for your willingness to serve. I appreciated that you met with my staff in October to discuss this role at HUD and the opportunity to learn more about your previous experience. In that meeting you shared that in your prior congressional affairs roles, you held weekly meetings with majority and minority staffs of the relevant committees and subcommittees. If confirmed, would you commit to holding a similar schedule of meetings with majority and minority staffs of the relevant committees and subcommittees for HUD?

Yes.

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**ADDITIONAL Questions for Dr. Kimberly Ann McClain, of Maryland, to be an Assistant Secretary of Housing and Urban Development, from Senator Raphael Warnock:**

1. I have concerns regarding HUD's draft solicitation for Housing Assistance Payments Contract Support Services and have joined my colleagues in urging HUD to withdraw this proposal. If confirmed, will you work collaboratively with me and program partners to instead design a proposal that prioritizes local stakeholders, like Atlanta-based National Housing Compliance, Inc., and builds on the strengths of the current system?

If confirmed, my responsibility as the Assistant Secretary for Congressional and Intergovernmental Relations would be to support HUD in its communication with Congress, State, and local governments. I understand that Congressional action is essential to continuing the important services provided in the Housing Assistance Payments Contract Support Services procurement in a manner that recognizes the needs of HUD and current program participants and I expect to work closely with you and other members of Congress and your staff toward achieving this shared goal.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

**MEMORANDUM OPINION, FDIC**

(Slip Opinion)

**Authority of a Majority of the FDIC Board  
to Present Items for Vote and Decision**

The Chairperson of the Federal Deposit Insurance Corporation does not have the authority to prevent a majority of the FDIC Board from presenting items to the Board for a vote and decision.

July 29, 2022

MEMORANDUM OPINION FOR THE GENERAL COUNSEL  
FEDERAL DEPOSIT INSURANCE CORPORATION

You have asked for our opinion regarding whether the Chairperson of the Federal Deposit Insurance Corporation (“FDIC” or “Corporation”) has the authority to prevent a majority of the FDIC Board (“Board”) from presenting items to the Board for a vote and decision. Letter for Christopher H. Schroeder, Assistant Attorney General, Office of Legal Counsel, from Harrel M. Pettway, General Counsel, FDIC (Mar. 10, 2022) (“FDIC Letter”).<sup>1</sup> Although the Board’s former Chairperson contended that the FDIC’s Bylaws gave her the authority to preclude a majority of Board members from placing an item on a meeting agenda or circulating an item for a notational vote, *see id.* at 3-4, a majority of the current FDIC Board contends that a majority of members may do so. *See* E-mail for Neil Kinkopf, Office of Legal Counsel, from Harrel M. Pettway, FDIC, *Re: FDIC Board* (June 11, 2022, 11:01 AM); FDIC Memorandum at 1.

The Federal Deposit Insurance Act of 1950 (“Act”), as amended, 12 U.S.C. § 1811 *et seq.*, vests the substantive and procedural powers of the FDIC in the Board, not the Chairperson, and the best reading of the FDIC’s Bylaws prescribed pursuant to the Act is that they preserve the power of a Board majority to present items for Board decision and vote. The internal FDIC documents you have provided to us describe a longstanding practice and informal management of the FDIC that is consistent with this conclusion. For the reasons we explain below, we

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<sup>1</sup> The FDIC Letter states that “the FDIC will conform its conduct on this matter to the OLC’s conclusion.” FDIC Letter at 1; *see* Memorandum for Martin J. Gruenberg, Acting Chairperson, FDIC, from Harrel M. Pettway, General Counsel, FDIC, *Re: Setting the Agenda for FDIC Board Meetings* (Mar. 10, 2022) (“FDIC Memorandum”).

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conclude that the Chairperson lacks the authority to prevent a majority of the Board from presenting items to the Board for a vote and decision.

## I.

We begin with the statute. The Act establishes the FDIC and provides that “management of the Corporation shall be vested in a Board of Directors.” 12 U.S.C. § 1812(a)(1). The Board is composed of five directors: the Comptroller of the Currency, the Director of the Consumer Financial Protection Bureau, and three directors appointed by the President, by and with the advice and consent of the Senate. *Id.* The President designates one of the appointed directors as Chairperson and another as Vice Chairperson. *Id.* § 1812(b). The Act vests the substantive and procedural decision making of the FDIC in the Board by explicitly empowering the Board to exercise “all powers specifically granted by the provisions of this chapter, and such incidental powers as shall be necessary to carry out the powers so granted.” *Id.* § 1819(a).<sup>2</sup>

In contrast to the broad governance and decision-making authority vested in the Board, the Act grants the Chairperson only a few specific and limited functions. *See, e.g., id.* § 1820(k)(5) (authorizing the Chairperson to grant waivers on a case-by-case basis of certain post-employment restrictions of FDIC employees who previously served as federal examiners of financial institutions); *id.* § 1831o(h)(3)(C)(ii) (providing an exception to the requirement to appoint a receiver for a critically undercapitalized institution if, *inter alia*, the Chairperson certifies that the institution is viable and not expected to fail); *id.* § 1831z(b) (requiring the Chairperson to submit a bi-annual report to Congress on the FDIC’s survey regarding the unbanked); *id.* § 1834a(d)(2) (providing that the Chairperson is a member of the Community Enterprise Assessment

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<sup>2</sup> Additionally, the Act specifically authorizes the Board to exercise the various substantive responsibilities of the FDIC. *See, e.g., id.* § 1815 (authorizing the Board to approve or deny applications for insured depository institutions); *id.* § 1817 (authorizing the Board to impose requirements, establish a risk-based assessment system, and set assessments for insured depository institutions); *id.* § 1818(a) (authorizing the Board to hold hearings and to terminate the insured status of depository institutions); *see also id.* § 1820(a) (requiring the Board to “administer the affairs of the Corporation fairly and impartially and without discrimination”). These provisions confirm that the Act vests the overall governance of the FDIC in the Board.

*Authority of a Majority of the FDIC Board to Present Items for Vote and Decision*

Credit Board). There is no general or specific source of authority in the Act that can be read as permitting the Chairperson to prevent a majority of the Board from exercising its statutory responsibilities or otherwise making decisions for the FDIC.

The power to present matters for Board vote and decision is not explicitly addressed by the Act. The Act, however, is perfectly clear that the Board, not the Chairperson, has the authority to determine how the FDIC should exercise its substantive powers, as well as the authority to prescribe procedures for making such substantive decisions—an “incidental power[] . . . necessary to carry out the powers so granted.” *Id.* § 1819(a). The Board could not exercise its power to impose reporting requirements on insured depository institutions, *id.* § 1817, for example, without first presenting such action to the Board for a vote and decision. *See Chatham Ventures, Inc. v. Fed. Deposit Ins. Corp.*, 651 F.2d 355, 359 (5th Cir. Unit B July 1981) (holding that the “incidental powers” conferred on the FDIC by 12 U.S.C. § 1819 encompassed FDIC actions “which are necessary to carry out the specific powers” explicitly granted to the FDIC by the Act). Nothing in the Act can be read as authorizing the Chairperson to prevent a majority of the Board from presenting items to the Board for a vote and decision, and, as far as we are aware, no one has ever taken the position that the Act authorizes the Chairperson to do so.

## II.

The Act authorizes the Board to prescribe bylaws “regulating the manner in which its general business may be conducted” and to prescribe “such rules and regulations as it may deem necessary.” 12 U.S.C. § 1819(a). Pursuant to this statutory authority, the Board has promulgated bylaws regulating the manner in which FDIC business may be conducted. *See* Bylaws of the FDIC (Feb. 18, 2022) (“Bylaws”). The Bylaws permit the Board “[w]ithin the limitations of the law” to “delegate any of its specific or incidental powers to any standing or special committee of the Corporation or to any officer or agent of the Corporation upon such terms and conditions as it shall prescribe, except the power to amend the[] Bylaws or to adopt new bylaws.” Bylaws art. IV, § 5. The Board, therefore, is authorized to delegate at least some of its statutory responsibilities, and it has done so in the Bylaws. Although the Bylaws do not directly address the authority to present items to the Board, our under-

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standing is that the Board has historically construed them—without controversy—to give the Chairperson the authority to set the agenda for meetings. The authority to set the agenda of a business meeting is distinct, however, from the authority to prevent the Corporation’s Board from voting on FDIC business by unilaterally blocking Board consideration of certain items entirely. The question here is whether the Bylaws prescribed by the Board, which are silent on this question of the Chairperson’s power to thwart the will of a Board majority, have somehow implicitly ceded this substantial authority to the Chairperson or whether, instead, the Bylaws are best read as preserving the power of a Board majority to present items for Board decision and vote.<sup>3</sup>

We note at the outset that “this Office is neither well-suited nor sufficiently well-versed, as a practical matter, in the internal workings of the [Board] to provide more than a general response” regarding the best interpretation of its own Bylaws. *Division of Powers and Responsibilities Between the Chairperson of the Chemical Safety and Hazard Investigation Board and the Board as a Whole*, 24 Op. O.L.C. 102, 103 (2000) (“*Chemical Safety Board*”) (quoting Memorandum for Reese K. Taylor, Jr., Chairman, and Heather Gradison, Commissioner, Interstate Commerce Commission, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel at 1 (Dec. 8, 1983) (“Olson Memorandum”). “Nevertheless, we believe that our discussion of the Board’s organization and of the background principles governing deliberative bodies against which it operates should be sufficient to guide you in resolving disagreements about the proper balance of authority in the Board’s affairs.” *Id.* And, of course, the Board itself can at any time amend its Bylaws to eliminate any uncertainty about questions such as the one at issue here.

The Bylaws mirror the Act in providing that “[t]he management of the Corporation shall be vested in the Board of Directors, which shall have all powers specifically granted by the provisions of the Federal Deposit Insurance Act and other laws of the United States and such incidental powers as shall be necessary to carry out the powers so granted.” Bylaws art. IV, § 5. The Bylaws provide that “[w]ithin the limitations of the

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<sup>3</sup> We will assume, without deciding, that the Act might permit the Board to delegate to the Chairperson the authority to deny a Board majority the ability to present items for a Board vote—at least as long as the Board does not completely divest itself of the capacity to reclaim such authority.

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Federal Deposit Insurance Act and other laws of the United States, the Chairperson shall manage and direct the daily executive and administrative functions and operations of the Corporation” and that the Chairperson shall have “the general powers and duties usually vested in . . . the chief executive officer of a corporation.” *Id.* art. VI, § 4(a). Pursuant to the Bylaws, the Board may conduct business in three ways. First, “[r]egular meetings of the Board of Directors shall be held at such times as the Chairperson shall direct, after reasonable notice is given to each member of the Board of Directors by the Executive Secretary in such manner as the Chairperson shall direct.” *Id.* art. IV, § 6(a). Second, “[s]pecial meetings of the Board of Directors may be called by the Chairperson or, upon the written request of any two members of the Board of Directors, by the Executive Secretary,” provided that “[r]easonable notice of any such special meeting shall be given to all members of the Board of Directors who can be contacted after a reasonable effort and in sufficient time to permit their attendance or participation.” *Id.* § 6(b). Finally, the Board may transact business without a meeting “by the circulation of written items” to members of the Board for their written “disposition of each item of business,” unless any Board member “request[s] to transact said business at a meeting of the Board of Directors.” *Id.* § 6(g). The Bylaws specify that the Chairperson presides at Board meetings when the Chairperson is able to attend and participate in such meetings. *Id.* § 6(e). “A majority of the members of the Board of Directors in office shall constitute a quorum for the transaction of business,” and a “vote of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Board of Directors.” *Id.* § 6(d).

Before addressing how the Bylaws are best construed, we pause to emphasize that the Board itself has the prerogative to construe the scope of its delegations to the Chairperson as falling short of giving the Chairperson the power to disregard the will of a majority of the Board. The Bylaws, like the Act, vest the Board with “management of the Corporation” and all express and implied powers under the Act, thereby reserving ultimate authority to the Board itself over the interpretation of the allocation of the Board’s own authority. 12 U.S.C. § 1819(a); Bylaws art. IV, § 5. Moreover, as we have previously concluded, “under general principles of corporate common law . . . the Board as a whole, acting reasonably, has the final authority to resolve disputes as to whether a specific matter is within its oversight authority or is an administrative or executive

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concern of the chairperson.” *Chemical Safety Board*, 24 Op. OLC at 105. “In disputes over the allocation of authority in specific instances, the Board’s decision controls, as long as it is not arbitrary or unreasonable.” *Id.* at 103. In other words, the ultimate authority to interpret the FDIC’s Bylaws resides not with the Chairperson—nor with the Office of Legal Counsel—but with the Board itself.

We do agree with the current Board majority’s interpretation that the delegations of authority to the Chairperson in the Bylaws are best understood as preserving the power of a Board majority to present items for Board decision and vote.<sup>4</sup> The Board has delegated to the Chairperson the authorities to direct the times of regular meetings of the Board, Bylaws art. IV, § 6(a), and to preside at Board meetings, *id.* § 6(e), which together have been understood within the FDIC to authorize the Chairperson to set the agendas for Board meetings. *See* Memorandum for Shelia Bair, Chairman, FDIC, from Robert E. Feldman, Executive Secretary, FDIC, *Re: Synopsis of Board Procedures* (July 6, 2006) (“Feldman Memorandum”). But neither delegation—nor the inferred authority to set agendas—speaks to the power to block a Board majority from voting to consider an additional item of business or, in the absence of a meeting, from circulating an item for a written vote of the Board.<sup>5</sup> Our Office has previously concluded that a chair’s regulatory authority to control a commission’s calendar did not include the authority to exercise veto power over what substantive matters the commission might consider. *See* Olson Memorandum at 11 (concluding that the authority of the Chairman of the Interstate Commerce Commission to exercise general control over the Commission’s calendar does not on its own authorize the Chairman to preclude the circulation of a draft decision that the Commission wishes to consider for consideration and vote of the Commission). Similarly, under parliamentary law, which the FDIC Board informally refers to for guidance, *see* Feldman Memorandum, presiding officers exercise generally

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<sup>4</sup> We have not been asked, and therefore do not address, whether the Bylaws are best read as authorizing the Chairperson to prevent less than a majority of the Board from presenting an item for Board consideration.

<sup>5</sup> The Board may “transact business by the circulation of written items to all members of the Board” in the absence of a meeting. The only explicit reference in the Bylaws to a means of preventing the Board from transacting business in this manner is in article IV, § 6(g), which provides that any Board member may “request to transact [that] business at a meeting of the Board of Directors.”

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ministerial duties that are not understood to include the authority to defeat the will of the majority. See Henry M. Robert et al., *Robert's Rules of Order Newly Revised* 448–51 (11th ed. 2011) (describing the duties of presiding officers); 59 Am. Jur. 2d Parliamentary Law § 8 (2022) (“The duties of a presiding officer are generally ministerial. . . . A presiding officer cannot arbitrarily defeat the will of the majority by refusing to entertain or put motions . . . or by refusing to permit the expression by the majority of its will.”).

The Board has also delegated to the Chairperson “the general powers and duties usually vested in . . . the chief executive officer of a corporation” and the authority to “manage and direct the daily executive and administrative functions and operations” of the Board. Bylaws art. VI, § 4(a). The current Board majority’s understanding of this delegation of authority as preserving the power of a Board majority to present items for Board decision and vote is not only reasonable, it is the most natural reading in light of the typical background presumption of majority rule for deliberative bodies with respect to deciding how to exercise their substantive functions. Corporate Chief Executive Officers (“CEOs”) generally do not have the power to countermand a board majority’s will; instead, the functions and duties of CEOs are subject to oversight by their boards. *Chemical Safety Board*, 24 Op. O.L.C. at 107; 1 James D. Cox & Thomas Lee Hazen, *Treatise on the Law of Corporations* § 8:1 (3d ed. 2021). Our Office previously concluded that a statutory delegation of authority to a board chair to serve as “Chief Executive Officer” and to “exercise the executive and administrative functions of the Board” conferred authority only to “carr[y] out the day-to-day activities necessary to effectuate the Board’s substantive decisions.” *Chemical Safety Board*, 24 Op. O.L.C. at 104. There, we reasoned that while “[s]ome degree of managerial discretion is inherent in the concept of an executive or administrative office, . . . any number of Board activities or day-to-day aspects of Board business . . . may involve or affect the Board’s duties and functions in ways that are of legitimate concern to the Board as a whole . . . [and] it is the prerogative of the Board to pass upon such issues in ways appropriate to its function as a policymaking and rule-setting body.” *Id.* at 105. We have similarly relied on the “presumption of majority rule” where no specific rule conferred power on either a board chair or the board to call a special meeting to “conclude that a majority of the Board may act to do so.” Letter for Mason H. Rose V, Chairperson, U.S. Architectural and Trans-

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portation Barriers Compliance Board, from Larry L. Simms, Deputy Assistant Attorney General, Office of Legal Counsel at 4 (Sept. 17, 1981). And, pursuant to a similar rationale, we previously concluded that the circulation of a draft decision that a majority of a commission wished to consider was a “substantive” matter “within the jurisdiction of the Commission” and not the subject of an exclusive “administrative authority” of the commission’s chairman. Olson Memorandum at 11. Collectively, these principles buttress the current Board majority’s understanding of their Bylaws as preserving the power of a Board majority to present items for Board decision and vote.

The Board majority’s current understanding is also consistent with the longstanding practice and management of the FDIC as described in internal FDIC documents you have provided to us. *See, e.g.*, E-mail for John F. Bovenzi, FDIC, from Robert Feldman, FDIC, *Re: Key Points About the Management of the FDIC* (Oct. 4, 2001, 12:38 PM) (“Feldman E-mail”). As a general matter, the Chairperson exercises agenda setting authority. *See* Feldman Memorandum at 2 (“The fact that the bylaws authorize the Chairman to schedule meetings of the Board and preside at those meetings and that they designate her the chief executive officer of the Corporation have been interpreted to stand for the proposition that it is the Chairman who sets the agendas for the meetings of the Board.”). Of course, setting the agenda is distinct from the authority to block the will of a Board majority, and historically “the Board has a well-established tradition of allowing members to make motions without the Chairman calling for one.” *See* Feldman E-mail. In fact, past FDIC practice has been that although the Chairperson sets the agenda for meetings, “informal management of Board meetings always affords the opportunity for new business to be brought up by any Board member.” *Id.* The current Board majority’s interpretation of its Bylaws as preserving the power of a Board majority to present items for Board decision and vote is consistent with this longstanding practice of the FDIC.<sup>6</sup>

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<sup>6</sup> As far as we have been able to determine, prior to 2021 there had never been a dispute between the Chairperson and a Board majority regarding whether to consider an item of FDIC business. There is, therefore, no longstanding practice—or any practice at all—concerning the specific question of whether the Chairperson has authority to block a Board majority from placing an item on a meeting agenda or circulating an item for a notational vote.

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We note that the current Board majority's understanding of its Bylaws may not be the *only* possible interpretation. As we explained in *Chemical Safety Board*, the division of authority in a corporation such as this is mostly "a matter of the development, through collegial practice and over time, of the [corporation's] own internal policies concerning delegation of authority to the . . . chairperson, the [corporation's] acquiescence in the chairperson's assertion of authority over certain substantive areas, and the general evolution of the [corporation's] current allocation of responsibilities." 24 Op. OLC at 108. "[T]he Board [is] free to shape and structure the details of its own internal operations in large part as it sees fit, and to do so in a practical matter, over time and on a case-by-case basis as its goals and agenda demand. . . . [T]he Board's determination of the appropriate division of authority between itself and its chairperson will of necessity turn on considerations of internal administration and practical working arrangements within the Board." *Id.* at 109. Nevertheless, we conclude that the current Board majority's interpretation of its Bylaws is the best reading of the scope of the Board's delegation of its own authority.

III.

For the foregoing reasons, we conclude that the Chairperson of the FDIC Board does not have the authority to prevent a majority of the Board from presenting items to the Board for a vote and decision. Please let us know if we may be of further assistance.

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