

Ranking Member Pat Toomey (R-Pa.)
Opening Statement
Full Committee Hearing
November 30, 2022 at 10:00 AM

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 four 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 nine 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 commonsense 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.