

Nomination Hearing
Senate Committee on Banking, Housing, and Urban Affairs
November 30, 2022

Opening Statements

Chairman Brown (D-OH) introduced the four nominees and thanked them for their willingness to serve the country. He discussed the responsibilities of the FDIC and said that the Committee today will consider three of the five Board positions. Brown believed that Gruenberg was exceptionally well qualified and pointed out that the Senate has unanimously confirmed Gruenberg five times in the past. He turned to Hill and acknowledged his past experience working for Sens. Shelby and Crapo. Brown also introduced McKernan and wanted to hear from him and Hill about how they plan to work with Gruenberg if confirmed. He emphasized working for Main Street instead of Wall Street. Brown turned to McClain and recognized her thirty years of policy experience, including her time in the Air Force and at the Department of Veterans Affairs.

Ranking Member Toomey (R-PA) remarked that the FDIC Board has not been at capacity since 2015 and while he commended Biden on nominating positions to complete the Board, Toomey had concerns about Gruenberg. Toomey talked about former Chair McWilliams being ousted and discussed Gruenberg's role in Operation Choke Point. He worried that some people on the left still would like to choke off capital and credit from certain industries by pressuring banks. Toomey was concerned that Gruenberg would continue to politicize the FDIC and encouraged him to steer away from doing that. He believed that Hill and McKernan were well qualified for their roles, if confirmed, and supported their nominations.

Sen. Van Hollen (D-MD) introduced Gruenberg by saying that he is the longest serving FDIC Board member and added that Gruenberg was a committee staffer for twenty years for former Sen. Sarbanes. Van Hollen said that no one can question Gruenberg's integrity and ability to work with others regardless of political party and supported his nomination.

Sen. Crapo (R-ID) introduced Hill, who worked for Crapo, saying that Hill worked in a bipartisan manner on some very complicated issues while he worked for Crapo and Shelby. He believed that Hill had the experience to excel in this role and supported his nomination.

Former Sen. Corker (R-TN) introduced McKernan and talked about his work on housing finance legislation during his time in Congress and his work at the FHA. Corker added that McKernan would be an outstanding director if confirmed and hoped he would be.

Witness Testimony

The Honorable Martin Gruenberg, *to be a Member and Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation*, thanked President Biden for nominating him and the Committee for holding this hearing. He noted that he has served as a member of the FDIC Board since 2005 and prior to that served as staff for Senator Sarbanes on the Senate Banking Committee. Gruenberg explained why he sought this nomination and then described the current period of economic uncertainty and his policy priorities for the FDIC, pointing to his testimony before the Committee two weeks ago. He closed by pointing to how he learned about public service from Sen. Sarbanes and thanking the employees of the FDIC for their commitment.

Mr. Travis Hill, *to be a Member and Vice Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation*, briefly described his family history and then noted his work on the Senate Banking Committee for Senators Crapo and Shelby. Hill pointed to his work at the FDIC as an advisor to Chairman Jelena McWilliams and as her deputy for policy. He noted his involvement on a wide range of policy initiatives and his help leading the agency through COVID. Hill looked forward to returning to the FDIC, if confirmed, and emphasized the importance of a well-tailored regulatory framework that promotes economic growth, innovation, and broad access to credit.

Mr. Jonathan McKernan, *to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation*, thanked President Biden for nominating him and Ranking Member Toomey for giving him another opportunity to continue public service in the Senate. He briefly described his family background and then outlined how his 15 years in financial services law, regulation, and policy have prepared him well to support the FDIC in its work. McKernan pointed to his work on the Committee under Sen. Corker and how he previously worked for more than 9 years as a banking lawyer. Lastly, he noted his experience with the 2008 financial crisis and how it left him 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.

Dr. Kimberly Ann McClain, *to be an Assistant Secretary of Housing and Urban Development*, thanked President Biden for nominating her and Secretary Fudge for supporting her nomination. If confirmed, she pledged to bear the same commitment to service and nonpartisanship that has guided her 30-year career in the United States military, private, and public sectors. McClain noted her work at the U.S. Department of Veterans Affairs (VA) and the expertise that she brings to her role. She explained that she was keenly aware of the struggles that homeowners and renters are facing and committed to working with Congress and its constituents to ensure that those most in need have an advocate at HUD. McClain then closed by outlining what her three core areas of focus would be if confirmed, and how she would lead as she did in her career in public service and as an Air Force officer.

Member Questions

Chairman Brown (D-OH) started with Hill asking if there is any public purpose to crypto right now. Hill responded that right now the promise of crypto is for the future and today, most involvement in crypto has been speculative investments in nature. However, he thought that there were a number of crypto projects that are intended to try to make aspects of our financial system more efficient, but most of that is theoretical and not part of everyday life today. Brown said that we cannot let thousands of risky assets used for speculation and sanctions evasion into our banking system. He saw what is happening with crypto and sanctions as a national security issue. Brown turned to McKernan and asked him to convince Brown of his commitment to serve the American people and not just Wall Street. McKernan said that he would stay focused ensuring that the FDIC fulfills its mission, saying that if there was another financial crisis, Wall Street would be fine but not Main Street. Brown turned to Hill and McKernan, asking if they agreed with VC Barr about taking a fresh look at enhanced capital regulatory requirements. Hill replied that he would go into this role with an open mind and had no issue with a holistic review. McKernan echoed Hill. Brown asked Gruenberg to talk about how he's worked collaboratively with Republican Board members to fulfill the FDIC mission. Gruenberg reflected on his working relationships during his time at the Senate Banking Committee and how he has tried to bring this experience to the FDIC. He noted his success in working across the aisle and reaffirmed his commitment to work with other members of the Board to reach agreement.

Ranking Member Toomey (R-PA) discussed allowing FDIC Board members to hire their own staff and asked Gruenberg to commit to providing members of the Board resources and hiring flexibility. Gruenberg replied yes. Toomey understood that the FDIC has an internal policy that meeting materials should be circulated to Board members two weeks before meetings and asked if he would commit to this deadline. Gruenberg replied that he would commit to doing his best and said that he is generally good at meeting this deadline and if not, he would talk with other Board members on this. Toomey turned to McWilliams being forced out and asked if there was any other time in FDIC history where non-Chairman Board members took control of the agency's agenda. Gruenberg discussed instances in the past where members of the Board have proposed cases at Board meetings and said it is common practice to raise matters at the end of Board meetings and while the Chair creates the agenda, the other members can put forward proposals as well. Toomey said that this has not happened before and was concerned by this and its lasting implications. He turned to the FDIC joining the Network for Greening the Financial System (NGFS) and asked Gruenberg if the FDIC should play a role in the pace that the US decreases carbon emissions. Gruenberg said that the FDIC does not play a role there and Toomey suggested that the FDIC withdraw from the group. Toomey asked Hill and McKernan about their bipartisan work while working in Congress. Hill mentioned multiple bills that he worked on with Democrats, including Johnson-Crapo and S. 2155. McKernan mentioned S. 2155 and other bills that he worked on in a bipartisan manner.

Sen. Reed (D-RI) discussed community banks being more effective in helping small businesses during the pandemic compared to bigger corporations and asked Gruenberg to talk about the state of community banks. Gruenberg replied that the FDIC is tasked with supervising community banks and believed the banks are critical and irreplaceable in the financial system. He added that community banks have performed quite well since the financial crisis and during the pandemic as well as playing a large role in distributing PPP funds. Reed turned to how he has been trying to expand the Military Lending Act (MLA), which caps the interest rate for service members at 36%, to all Americans. He thought 36% in this climate is a rather generous interest rate. Reed then asked the panel if they would be supportive of such a proposal since he assumed that most of the FDIC insured institutions charge much lower interest rates than that. Hill appreciated Reed's work in this area and said that banks must treat their customers fairly and loans that banks make should be affordable and ones that consumers can repay. With respect to the interest rate cap, Hill said that they have to be careful about how they balance affordability with access to credit, but he would be happy to consider taking a look at the legislation and would implement the legislation as required if it passed. McKernan noted that, as staff for Sen. Corker, he had a number of conversations with those at Pew Trust on creative thinking in that area and one thing he learned is that this is a complex issue. He understood what Reed was getting at, it's an important issue, and said that he would be eager to work with Reed and his staff to provide technical assistance if confirmed.

Sen. Shelby (R-AL) specifically talked about Hill and believed he was highly qualified and educated for his nomination. He turned to Gruenberg, who he mentioned working with in the past, and associated himself with some of the concerns Toomey mentioned. Shelby knew Gruenberg was highly qualified but hoped Gruenberg would think about the past, referring to the ousting of McWilliams.

Sen. Menendez (D-NJ) discussed the collapse of many crypto asset platforms and worried about contagion, specifically mentioning BlockFi's filing for bankruptcy due to its exposure to FTX. He thought this contagion risk could be amplified if crypto assets become further integrated into the traditional economy. Menendez asked how Hill and McKernan would ensure that FDIC's supervised institutions would be shielded from inappropriate risks in the digital asset space. Hill answered that it's important to distinguish between different types of crypto-related activities that banks can get involved in. He explained that 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. Hill went on to say that, generally, the FDIC and other agencies must ensure that activities are legally permissible and done in a safe and sound manner. McKernan replied that any crypto activities at a FDIC bank need to be performed in a safe and sound manner, in compliance with consumer protections and other law, and they cannot pose a risk to financial stability. He noted that, if confirmed, he would want to better understand what crypto activities are permissible and added that the market regulators play a role here as well, but

it comes down to safety and soundness. Menendez asked Gruenberg if he would commit to keeping Congress updated on the findings of the FDIC's research on the integration of digital assets into the traditional financial system. Gruenberg replied yes. Menendez expected the nominees to continue the scrutiny of crypto by the FDIC if confirmed. Menendez turned to Hispanic employment at the FDIC and asked why the FDIC has lagged behind other agencies in hiring Hispanic people. Gruenberg acknowledged the lack of Hispanic employment and discussed the creation of an interdivisional Task Force which focuses on recruitment, hiring, training, and promotion of Hispanic employees. Menendez asked Gruenberg, Hill, and McKernan if they were committed to a diverse workforce. All three replied yes. Menendez turned to McClain on the lack of regional staff at the Newark HUD office and asked if she would commit to ensuring that New Jersey has the resources it needs. McClain committed to this. Menendez added that if this issue is not addressed, he would have issues supporting future HUD nominees regardless of how qualified they are.

Sen. Tillis (R-NC) looked forward to supporting Hill and McKernan's nominations. He turned to Gruenberg on the apolitical nature of the FDIC and had concerns about Gruenberg's ability to be apolitical. Tillis expressed worry about Gruenberg's leadership, despite how qualified he is. Tillis then turned to the FDIC's request for public comment on the Bank Merger Act, in conjunction with Director Chopra, saying that the document was posted to the CFPB website against the wishes of the Chair at the time. Tillis then asked if Gruenberg could provide the names, positions and agency affiliations of the individuals who drafted the document. Tillis asked if Gruenberg would provide the names of who signed onto the document. Gruenberg replied yes. Tillis continued by asking for another instance where another agency publicly posted FDIC policy updates against the wishes of the Chair. Gruenberg replied that there was not another instance. Tillis asked if Gruenberg could provide an instance where an alleged official action of the FDIC was posted on the OCC website or into their public record against the wishes of the FDIC Chair. Gruenberg replied that he would check the record. Tillis did not think he would find any instances and had great concerns about how the FDIC would operate in the future.

Sen. Tester (D-MT) stated that McClain has impressive experience working in congressional affairs and said that she is more than qualified for the role that she has been nominated for. He had no doubt that McClain would do a great job at HUD and asked what her priorities would be if confirmed. McClain replied that she would focus on her staff and the needs of the congressional and intergovernmental relations team, so they feel empowered to do their job. She added that her second priority would be ensuring there is a consistent flow of information to Congress and to states as well. McClain said another priority of hers would be understanding capacity needs and what the additional physical needs of the team are. Tester asked what lessons she will bring from the Air Force to her role. McClain replied she would bring the qualities of humbleness, credibility, and being approachable. Tester turned to crypto and how it has come up

a lot since the meltdown of FTX. He did not think that crypto passes the ‘smell test’ and he did not want to give it credibility by regulating it. Tester asked how one stops regulation from inherently giving crypto credibility. Gruenberg agreed and said the FDIC’s approach has been to identify the activities, understand them and the risks, make judgements about safety, soundness, and consumer protection, as well as BSA/AML before allowing banks to get involved in the crypto activity. Hill agreed and said that the FDIC’s focus is on the safety and soundness of the institutions it oversees. McKernan echoed Gruenberg and Hill. Tester supported all four nominees.

Sen. Lummis (R-WY) scratched her head at the FDIC nominees in terms of diversity and was angry that Gruenberg forced the resignation of McWilliams who was a woman and first-generation immigrant. She asked if there are any women on the FDIC board and if Gruenberg’s nomination advances diversity. Gruenberg replied no to both questions. He reaffirmed his qualifications to provide leadership at the FDIC. Lummis asked why he forced the FDIC chair out. Gruenberg replied that it goes back to the authority of the agency being vested in the Board of Directors. Lummis turned to Dodd-Frank requiring the FDIC to have one member with state bank supervisory experience, saying that Hill nor McKernan have this experience and asked Gruenberg if he has this experience. Gruenberg replied no. Lummis asked if Gruenberg had ever written a Report of Examination or issued an Exam Rating to a community bank. Gruenberg replied no. Lummis asked if Gruenberg thought that someone with this experience should have been nominated to the Board. Gruenberg replied that it is up to the President to nominate people. Lummis found it clear that the White House and this Committee think it is okay to ignore the text of Dodd-Frank and thought that the Committee should not move forward with these nominees without complying with the law.

Sen. Cortez Masto (D-NV) asked about McClain’s commitment to working with her staff on improving the HOME program. McClain replied yes. Cortez Masto asked if McClain would provide the data on this program if confirmed. McClain replied yes. Cortez Masto turned to the FDIC nominees, asking what Hill would do to promote BankOn and other affordable banking services. Hill replied that financial inclusion is an important part of what the FDIC does and discussed the work the FDIC has done with BankOn. He planned to engage more on this issue to see what can be done if confirmed. Cortez Masto asked McKernan how he will ensure changes to the CRA will preserve branch banking. McKernan replied that being from east Tennessee, the CRA resonated with him personally and said he would ensure that the CRA fulfills the statutory mandate. Cortez Masto then asked how McKernan would address the limited banking services for tribal communities. McKernan said the CRA would play a role here as well. Cortez Masto turned to Gruenberg on ILCs and asked if Gruenberg had anything to add about risk to the financial sector posed by non-bank sectors or other issues. Gruenberg thought it was a key risk factor for the agency to work on and said that third party bank companies are a significant source of risk to insured depository institutions, adding that the bank needs to be aware of the risk when

interacting with third parties because the bank is accountable for these activities. Cortez Masto asked Gruenberg to elaborate on a DOJ slip opinion regarding a response to a question about whether the chair of the FDIC has the authority to prevent a majority of the FDIC Board from presenting items to the Board for a vote. Gruenberg replied that this was requested by the general counsel of the FDIC to get clarity around the issue. Cortez Masto then summarized that clarity by saying it was her understanding that the Chair cannot prevent other Board members if they choose as a majority to present items before the Board. Gruenberg said that was correct.

Sen. Hagerty (R-TN) turned to a letter the FDIC sent in April to all FDIC supervised institutions requiring them to notify the agency about their crypto-related activities. He then asked Gruenberg about the process that supervised entities have to go through to accomplish this. Gruenberg replied that the FDIC was trying to understand the engagement of its insured institutions with crypto-related activities. He said they wanted to find out which of their insured institutions are either engaged or considering engaging in crypto activities. He continued that the request entails notification to the FDIC and provision of details of the nature of the crypto activity so it can be evaluated from a safety and soundness as well as BSA/AML perspective. Gruenberg said this allowed the FDIC to survey which institutions are engaged or considering it and what they were doing. Hagerty believed that crypto technology poses great potential and was concerned about any activity that might chill it. Hagerty said that Gruenberg is establishing a precedent, which requires businesses to notify their supervising regulator about their involvement in sectors that the supervisor deems high risk. He asked if this was correct. Gruenberg replied that the financial institution letter was specific to crypto-related activities and their letter identified the risks they saw from a safety and soundness standpoint. Hagerty did not think that Gruenberg understood his question and said that whether it is Operation Choke Point or the creation of new merchant codes for firearm and ammunition purchases or the de-banking of the oil and gas industry, our financial industry is becoming increasingly politicized. He was concerned that this FDIC letter may be the FDIC ‘testing the water’ to go after other industries. Hagerty asked if there are any other sectors of the economy that FDIC institutions will need to disclose their involvement in. Gruenberg replied no. Hagerty asked him to commit to not go after any other politically sensitive industry that might become a target. Gruenberg committed to not target these industries.

Sen. Van Hollen (D-MD) thought Gruenberg’s inquiry on crypto was a worthwhile and necessary endeavor, especially in light of the FTX collapse. He then followed up on the CRA question and asked about the timeline with respect to a new CRA rulemaking. Gruenberg replied that the 90-day comment period ended in August and the staff have been reviewing them. He added that it is the top priority of the FDIC to complete this rulemaking and estimated that it could possibly be done at the beginning of next year. Van Hollen discussed online lending not subject to FDIC review or CRA and hoped that those lenders would not discriminate and asked Gruenberg to discuss proposals of the CRA. Gruenberg replied that the proposal is ambitious but

that the core provision deals with the fact that the CRA is limited to the branch network of banks and said that the key challenge of the rulemaking was to deal with the evolution of bank lending, adding that the provision identifies new retail assessment areas in non-bank entities. Van Hollen said this does create responsibilities for FDIC and insured institutions that are not applied to others. Van Hollen offered support to all four nominees.

Sen. Daines (R-MT) discussed the circumstances surrounding the ousting of Chair McWilliams and had concerns about the consequences of these actions. He thought it was inappropriate that Gruenberg was able to serve on an expired term. Daines turned to Operation Choke Point and asked Gruenberg to commit to actively preventing FDIC employees from criticizing, discouraging, or prohibiting banks from lending or doing business with banks or customers who are operating in accordance with the law. Gruenberg replied yes. Daines turned to McClain and asked if she agreed with VA Secretary MacDonough that ‘the lifeblood of any well-functioning organization is accurate and timely data.’ McClain agreed. Daines asked how she would transfer her skills from her role at the VA to HUD. McClain replied that she will continue to work with constituents and committee members to better serve the American public.

Sen. Warren (D-MA) called the attacks on Gruenberg regarding McWilliams baseless and believed that McWilliams was in the wrong and cited a DOJ memo that determined this. She asked Hill if the Office of Legal Counsel determined that a majority of the FDIC Board had the authority to bring items before the Board for a vote. Hill deferred to the memo’s decision. Warren added that McWilliams broke the law when she blocked the vote and when she got caught, she resigned. Warren turned to the implosion of FTX and worried about the contagion of the collapse. She turned to McKernan, assuming he had been following this since he advises Senate Banking Republicans and asked if the contagion has shaken our banking system. McKernan replied no. Warren continued that this is not by accident because our regulators have prevented crypto from being intertwined in our banks. She said that Trump regulation would have done otherwise and asked Gruenberg if our banking system would be less safe than it is today if a bunch of banks that the FDIC insures were all in on crypto. Gruenberg replied that he thought so and said that the evidence is clear that companies were engaging in risky activities and did not have clear exposure to insured financial institutions, so the failure of the firms have been limited to the crypto space. Warren believed in having a clear line between crypto and the traditional banking system.

Sen. Ossoff (D-GA) began with Gruenberg asking him what he viewed as the most significant threats to US and global financial stability. Gruenberg noted the changing environment with respect to the conduct of monetary policy and the efforts of the Fed to respond to inflation by raising interest rates, which is not limited to the US central bank. He thought about the risk here and the effect of a global tightening to deal with inflationary pressures carries the risk of significant consequences for the economies of those countries and thought we have to keep an

eye on this. Ossoff asked about the most concerning channels or mechanisms of action by which higher rates could threaten financial stability. Gruenberg pointed to the exposure to interest rate risk in our financial system, many banks have an overhang of unrealized losses on their books with the rise in interest rates, and outside of the banking system, in the nonbank financial sector, there is a less clear line of sight and leverage could be accumulating there. He said that this is a priority for the FSOC. Ossoff asked about the overhang Gruenberg referred to in the commercial banking system, where the most significant leverage is, and who the borrowers are. Gruenberg replied that securities are being held on the bank balance sheets but as rates are rising, the longer-term securities have a negative value right now which is an overhang. He said that as the market evolves, there are substantial unrealized losses that could impact financial institutions. Ossoff discussed liquidity in Treasury markets and asked about the level of risk there. Gruenberg deferred to Yellen and Powell on Treasuries but believed that this is an issue which is principally driven by the volatility in the financial markets. He believed that the Fed and Treasury are very focused on this and said that Treasury securities are very important to the market.

Ranking Member Toomey responded to Warren saying that McWilliams was the subject of outrageous allegations and believed that she served at the FDIC with the utmost integrity and exercised her regular authority at the FDIC. On crypto, Toomey said that we should be looking at these projects as software protocols that will solve problems for everyday Americans. He compared crypto to the beginning of the internet, Google, Uber, and other technologies that have changed American life.

Chairman Brown disagreed with Toomey on crypto and on the McWilliams situation. Brown said that McWilliams chose to resign, which is the important point here. He said that the Committee will work quickly to pass these nominations.