



FEDERAL DEPOSIT INSURANCE CORPORATION

JELENA McWILLIAMS
CHAIRMAN

November 15, 2018

Honorable Blaine Luetkemeyer
House of Representatives
Washington, D.C. 20515

Dear Congressman Luetkemeyer:

This is in further response to your October 15, 2018, letter expressing concerns about allegations of past misconduct at the FDIC.

I assumed my duties as Chairman of the Federal Deposit Insurance Corporation with utmost respect for the rule of law and for the obligation of the United States government to be accountable to its citizens. I have seen first-hand what happens when these values are not respected. Growing up in communist Yugoslavia under a system where ordinary citizens could not question the government, I witnessed the abuses that can arise when those in power are accountable only to themselves.

I am deeply invested in transparency and accountability at the FDIC. These principles are paramount to maintaining the public trust. As such, I am troubled that certain FDIC employees acted in a manner inconsistent with FDIC policies in what has been generically described as “Operation Choke Point.”¹ To ensure that the FDIC’s commitment to integrity remains unequivocally clear, I am asking an outside law firm to review the prior actions taken by the FDIC in this matter so that I can better ascertain the effectiveness of our response.

The FDIC has an obligation to ensure that the banks we supervise are operating in a safe and sound manner. We have a responsibility to ensure that these banks have processes and procedures in place to identify fraudulent or illegal activity, whether it occurs at the bank or at vendors or customers with whom the bank has relationships. The exercise of these fundamental FDIC responsibilities must be borne out of our laws and regulations. They must never be based on personal beliefs or political motivations. Regulatory threats, undue pressure, coercion, and intimidation designed to restrict access to financial services for lawful businesses have no place at this agency.

¹ The FDIC’s role in Operation Choke Point and Supervisory Approach to Institutions that Conducted Business with Merchants Associated with High-Risk Activities, Office of the FDIC Inspector General, Rep. No. AUD-15-008 at iv (September 2015).

The FDIC's guidance is clear: insured 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."² 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."³

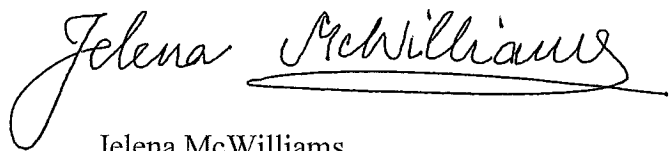
We have placed clear limitations on the ability of any FDIC personnel to recommend the termination of account relationships, including requirements that any such recommendations be made in writing, that Regional Directors review such recommendations, and that all such recommendations are reported to the FDIC Board of Directors and Division Directors.⁴ The memorandum also makes clear that examiners should not use "informal," unwritten suggestions related to account terminations or criticism of a bank's "management or mitigation of risk associated with deposit accounts."⁵ No recommendation should be made to terminate an account relationship based solely on reputational risk to the institution.⁶ Independently, banks must also make responsible decisions about whether servicing any particular customer is consistent with their business plan, risk-appetite, and management capabilities – a decision most appropriately left with the bank's management and directors.

To reiterate these principles, I have directed additional training for our examination workforce to ensure that we adhere to the highest standards of conduct and respect the rule of law. The leaders of our examination workforce already have conducted targeted discussions with their staffs, and we will incorporate case studies on "Operation Choke Point" into our formal examiner training.

Consistent with my "Trust through Transparency" initiative, I also ask that anyone aware of any improper conduct by the FDIC to email me at Transparency@FDIC.gov. Any allegation of misconduct will be investigated fully and any employee engaged in the activity will be disciplined appropriately.

Under my leadership, the FDIC's oversight responsibilities will be exercised based on our laws and our regulations, not on personal or political beliefs.

Sincerely,

A handwritten signature in cursive script that reads "Jelena McWilliams". The signature is written in black ink and is positioned above the printed name.

Jelena McWilliams

² FDIC Financial Institution Letter, FIL-5-2015 (28 January 2015).

³ *Id.*

⁴ FDIC Memorandum to Regional Directors (28 January 2015).

⁵ *Id.* See also Statement of the FDIC Board of Directors on the Development and Communication of Supervisory Recommendations (29 July 2016).

⁶ FDIC Memorandum to Regional Directors (28 January 2015).