

DOJ Opines on FDIC Board

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The DOJ recently published an [opinion](#) from the Office of Legal Counsel (“OLC”) regarding the FDIC Board. The OLC opinion concluded 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.”

This OLC opinion was requested by the current General Counsel of the FDIC. Readers may recall that at the end of 2021, there was a bit of a [power struggle at the FDIC Board](#) on whether the FDIC should proceed with a request for information on Bank Merger Act Guidelines. While a majority of the FDIC board (the three members appointed by a Democrat) were in favor of issuing the request for information, the then-Chair of the FDIC, the sole Republican on the Board at that time, was not in favor of the issuance, and purported to block the issue from the agenda of a board meeting. Chair McWilliams [resigned](#) from the FDIC Board shortly after this disagreement.

The OLC opinion makes clear that most power is vested in the FDIC Board rather than solely in the Chairperson. The opinion could become important again the next time Presidential administrations switch parties and we see a change in the makeup of the *ex officio* members (*i.e.*, the Comptroller of the Currency and the Director of the CFPB).

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National Law Review, Volume XII, Number 245

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