

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

November 8, 2017

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
2175 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to request that you join me in placing the full authority of the Committee behind a letter that I sent on September 21, 2017, requesting documents from the Federal Deposit Insurance Corporation (FDIC) regarding the recent decision to ban from the banking industry a banker who is currently serving as a “senior adviser” to Scott Pruitt, the Administrator of the Environmental Protection Agency (EPA).¹

The FDIC has determined that, based on his previous conduct as an Oklahoma banking official, Albert C. Kelly is unfit to serve in the banking industry. This finding raises serious concerns about whether Mr. Kelly is fit to serve in our government as one of the top advisers to the EPA Administrator leading a major task force.

On July 27, 2017, the FDIC issued an “Order of Prohibition from Further Participation” banning Mr. Kelly from working for any U.S. financial institution and imposing a fine against him of \$125,000.² The FDIC’s order made serious findings, although it did not provide specific details. The order stated:

The FDIC considered the matter and determined that it had reason to believe that:

- (a) The Respondent [Mr. Kelly] has engaged or participated in a violation of law or regulation, unsafe or unsound practice, and/or breach of fiduciary duty as an institution-affiliated party of SpiritBank, Tula, Oklahoma (“Bank”),
- (b) By reason of such violation, practice or breach, the Bank has suffered financial loss or other damage; and

¹ *Adviser to EPA Chief Cited for Federal Banking Violations*, Associated Press (Aug. 28, 2017) (online at www.apnews.com/649fb04caa70402789c667792019a0f5).

² *In the Matter of Albert C. Kelly*, FDIC-15-0179e (July 27, 2017).

- (c) Such violation, practice or breach involved Respondent's willful or continuing disregard for the safety or soundness of the Bank.

The order also stated:

The FDIC further determined that such violation demonstrated Respondent's unfitness to serve as a director, officer, person participating in the conduct of the affairs or as an institution-affiliated party of the Bank, any other insured depository institution, or any other agency or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A).

On September 21, 2017, I sent a letter to the FDIC requesting the investigative and adjudicatory case files relating to Mr. Kelly and all documents obtained by the FDIC on which the Order of Prohibition from Further Participation was based.³

In response, the FDIC sent a letter on October 17, 2017, producing only publicly available information, but declining to produce non-public information. The letter stated:

Most records related to investigation and enforcement actions against financial institution-affiliated parties are considered non-public information. Disclosure of such records is governed by Section 309.5 of the FDIC's Rules and regulations, which generally exempts from disclosure records containing confidential commercial or financial information, intra-agency memoranda not available by law to a private party in litigation with the FDIC, or documents related to the examination of a financial institution.⁴

It is imperative that Congress have access to information about the abuses that Mr. Kelly allegedly engaged in that resulted in the FDIC's fine and order against him.

You declined to join my letter to the FDIC on September 21, 2017. Given the FDIC's response, I now ask that you reconsider your decision and join me in sending a new request for these documents on behalf of the Committee. If you choose not to do so, then I ask you to place this matter on the agenda for our next regularly scheduled business meeting so all Committee members will have the opportunity to vote on a motion to subpoena the FDIC for these documents.

³ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Chairman Martin J. Gruenberg, Federal Deposit Insurance Corporation (Sept. 21, 2017).

⁴ Letter from Chairman Martin J. Gruenberg, Federal Deposit Insurance Commission, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Oct. 17, 2017) (citing 12 C.F.R. § 309.5(g)(1)-(9)).

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Elijah E. Cummings". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Elijah E. Cummings
Ranking Member