



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

MICHELLE W. BOWMAN  
VICE CHAIR FOR SUPERVISION

June 25, 2026

The Honorable Rashida Tlaib  
United States House of Representatives  
Washington, D.C. 20515

Dear Congresswoman Tlaib:

During the hearing before the House Financial Services Committee on June 4, you suggested that conversations with bank executives during an open comment period for a pending regulation were unlawful, citing *HBO v. FCC*. I appreciate the opportunity to clarify the record.

Bank capital rulemaking under the APA is informal rulemaking, and there is no legal prohibition on discussions between regulators and stakeholders.<sup>1</sup> A regulator who does not speak to regulated institutions cannot regulate them effectively. The Federal Reserve regulates some of the largest, most complex financial institutions in the world. In my role as the Vice Chairman for Supervision of the Federal Reserve Board (Board), I have an obligation to the American public to understand how capital rules will affect bank lending, credit availability, and financial stability - not in the abstract, but in practice. That requires hearing directly from the institutions the Board regulates. It also requires hearing from consumer groups, community banks, academics, and the public - all of whom are equally welcome to participate in this comment period, and many of whom did. Further, my statutory mandate requires industry engagement.

Congress created the Vice Chairman for Supervision role in Section 1108 of the Dodd-Frank Act and codified it at 12 U.S.C. § 242. The statute states that the Vice Chairman for Supervision “shall develop policy recommendations for the Board regarding supervision and regulation of depository institution holding companies and other financial firms supervised by the Board.” Developing sound policy recommendations for capital rules requires direct engagement with the banks those rules govern. Conversations with bank executives and a range of stakeholders are not incidental to my role - they are essential to it.

Encouraging participation in a public comment process is the antithesis of an unlawful ex-parte communication. Rather, as federal courts and the Administrative Conference of the United States have recognized, open communication between agency personnel and the public is not only permitted during informal rulemaking - it is encouraged to facilitate public engagement.

*HBO v. FCC* addresses a specific harm: an agency receiving secret, off-the-record input from private parties that shapes a final rule without being disclosed in the public rulemaking record. I have neither encouraged nor received any secret, off-the-record input from banks or other stakeholders. In fact, I have encouraged the submission of views through the public comment process - on the record, in the docket, where every stakeholder including consumer advocates, academics, and community banks can read, and react. Directing parties toward the transparent public record is precisely the practice *HBO v. FCC* was designed to enforce.

I remain committed to a transparent, rigorous rulemaking process that produces capital rules well-calibrated to actual risk, supports a sound banking system, and serves the long-term interests of American families and businesses.

Respectfully,



cc: Chairman French Hill, House Financial Services Committee

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<sup>1</sup> The strict ex parte prohibition that you appear to have invoked applies to formal rulemaking proceedings, which are quasi-adjudicatory in character. You cited a federal appeals court decision from 1977 to argue that, in informal rulemaking under the Administrative Procedure Act, an agency official with decision-making authority over a rulemaking should refuse to discuss matters related to the rulemaking with any interested private party. See *Home Box Office, Inc. v. FCC*, 567 F.2d 9 (D.C. Cir. 1977). However, subsequent decisions from that same appellate court have generally declined to apply the holding in *Home Box Office* to informal rulemakings and clarified that, as a general matter, *ex parte* communications with agency officials regarding informal rulemakings are not only permissible, but often an important part of the policymaking process. See, e.g., *Sierra Club v. Costle*, 657 F.2d 298, 400-04 (D.C. Cir. 1981) (declining to apply *Home Box Office* and stating that “the importance to effective regulation of continuing contact with a regulated industry, other affected groups, and the public cannot be underestimated”); *Action For Children's Television v. FCC*, 564 F.2d 458, 474-78 (D.C. Cir. 1977) (declining to apply *Home Box Office* in the case of an informal rulemaking and stating that “[w]here Congress wanted to prohibit *ex parte* contacts it clearly did so”); *Air Transp. Ass’n of Am. v. FAA*, 169 F.3d 1, 7 & n.5 (D.C. Cir. 1999) (suggesting *Home Box Office* may be inconsistent with the Supreme Court’s decision in *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Defense Council, Inc.*, 435 U.S. 519 (1978)).