The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Mr. Michael Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th St. SW
Washington, DC 20219

Mr. Michael S. Barr
Vice Chair for Supervision
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW Washington,
Washington, DC 20551

Mr. Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W
Washington, DC 20429

June 20, 2023

Dear Secretary Yellen, Acting Director Hsu, Vice Chairman Barr, and Chairman Gruenberg,

The collapses of Silvergate Bank, Signature Bank, Silicon Valley Bank and First Republic Bank have shaken the U.S. financial system and provided further evidence that even regional and midsized banks, without appropriate risk governance and controls and in the absence of adequate regulation and effective oversight, can greatly impact the stability of the economy.

These banks failed following waves of mergers in recent decades that have led to a dangerously consolidated industry. We learned hard lessons about consolidation and systemic financial risk from the 2008 financial crisis. Yet, the lack of robust merger guidelines and absence of a framework for the supervisory agencies to analyze systemic risk factors when evaluating a merger have led to a continuing repeat of the mistakes of the past. It is striking that the Federal Reserve's approval in 2021 of SVB's acquisition of Boston Private Bank declared that the resulting "organization would not be a critical services provider or so interconnected with other firms or markets that it would pose significant risk to the financial system in the event of financial distress."[1] This kind of mistaken judgment must not continue.

[1] Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches, Federal Reserve FRB Order No. 2021–08, Jun 10, 2021, https://www.federalreserve.gov/newsevents/pressreleases/files/orders20210610a1.pdf

Americans are paying the price of this dangerous consolidation on a daily basis. As the banking industry has grown more concentrated, a growing body of evidence has showcased the vast array of harms that bank consolidation poses to markets, communities, working Americans, and small businesses. These consequences include higher fees, more expensive and less available credit for individuals and businesses, lower deposit interest rates, branch closures, and job cuts, among others.[2]

Bank consolidation also poses a risk to the financial system. As banks get bigger and more powerful, individual failures increasingly may endanger the entire economy. The largest four U.S. banks, which controlled under 10 percent of the nation's deposits in 1995, have nearly quadrupled their market share, clocking in at 36 percent in 2020.[3] Today, the six largest U.S. banks (JPMorgan Chase, Bank of America, Citigroup, Wells Fargo, Goldman Sachs, and Morgan Stanley) control more assets than all others combined.[4] The banks that failed so far this year, while much smaller than their global Wall Street counterparts, required extraordinary government action to prevent their collapses from devastating the economy. Individual banks should be able to fail without taking down the economy, but as consolidation leaves a smaller number of larger and more complex banks dominating the financial system, individual failures increasingly threaten systemic consequences.

Yet the Federal Reserve, FDIC and OCC continue to facilitate further consolidation. The fire sale of First Republic Bank to JPMorgan earlier this month inflated the size of JPMorgan, already the nation's largest bank, by $200 billion. Financial analysts hailed it as the firm's "best deal in decades," estimating the deal could hand JPMorgan another $1 billion annually.[5] While the transaction received regulatory approval from the FDIC – required by law to accept the highest bid and lowest cost to the Deposit Insurance Fund – it also was approved by the OCC, which is legally obligated to consider whether the proposed transaction poses a risk to the stability of the financial system due to an increase in size of the combining institutions.[6][7]

In its letter approving the deal, the OCC stated that "[t]he Transaction does not increase risk to the stability of the United States banking or financial system as it facilitates the orderly resolution of

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[2] Shahid Naeem, "Janet Yellen is wrong about bank mergers, and we could all pay the price," The Hill, May 18, 2023, https://thehill.com/opinion/finance/4007341-janet-yellen-is-wrong-about-bank-mergers-and-we-could-all-pay-the-price/; Jeremy Kress, "Biden Wants to Crack Down on Bank Mergers – Here's Why that Could Help Consumers and the Economy," University of Michigan Ross School of Business, Aug 4, 2021, https://michiganross.umich.edu/news/biden-wants-crack-down-bank-mergers-here-s-why-could-help-consumers-and-economy

[3] Letter from Americans for Financial Reform Education Fund to Assistant Attorney General Makan Delrahim, Oct 16, 2020, https://ourfinancialsecurity.org/wp-content/uploads/2020/10/AFREF-Comment-on-DOJ-Bank-Merger-Guidelines-10-16-20.pdf

[4] Large Holding Companies, Federal Reserve Data, 2022, https://www.ffiec.gov/npw/Institution/TopHoldings

[5] Breanna Bradham, "Bove Says First Republic May Be JPMorgan's Best Deal in Decades," Bloomberg, May 1, 2023, https://www.bloomberg.com/news/articles/2023-05-01/odeon-s-dick-bove-says-first-republic-may-be-jpmorgan-s-best-deal-in-decades.

[6] Bank Merger Act, 12 USC 1828(c)(5)

[7] 12 USC 1828(c)(5)

an insured depository institution in default."[8] Unfortunately, it does present such a risk. By the G-SIB score metric, which estimates the impact to our financial system of large bank failures, JPMorgan's bid for First Republic represented between an 800 percent and 1400 percent increase in risk to the banking system over other reported bids, including those from PNC and Citizens Bank.[9] It is troubling that the OCC chose to approve this deal and make the country's biggest bank even bigger.

In its approval, the OCC also stated that it considered the risks of the transaction to "the financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served," with no mention of its determination of the managerial risks and community impacts of JP Morgan's compliance record.[10] JPMorgan has paid more than a billion dollars in fines just since 2020 for violating the law, including for market manipulation, mismanaging Americans' mortgage escrow balances and failing to properly protect its customers from identity theft.[11]

Furthermore, at the time of the transaction, JPMorgan already exceeded the Riegle-Neal national deposit cap by owning more than 10% of the nation's bank deposits. But for a loophole allowing banks in violation of the cap to purchase failing banks, federal law would prohibit JPMorgan from consummating any bank merger in every other circumstance.[12] Moving forward it is critical that regulators not circumvent the Riegle-Neal national deposit cap when managing any future emergency merger.

By doing so, the aforementioned regulators handed JPMorgan, already too big to fail and the country's biggest bank, its best deal in decades, making it even bigger and more powerful – at a cost to the Deposit Insurance Fund of $13 billion.[13]

Bigger banks, more mergers, and more consolidation cannot be the solution to this year's banking sector turmoil. The Biden Administration has explicitly prioritized combatting corporate consolidation in banking as a key element of its whole-of-government strategy to address industry

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[8] Letter from Stephen A. Lybarger, OCC Deputy Comptroller for Licensing, to John H. Tribolati, Secretary, JPMorgan Chase Bank, May 1, 2023, https://www.occ.gov/topics/charters-and-licensing/app-by-jp-morgan-chase-bank.pdf.

[9] Anna Hrushka, "Warren blasts First Republic's 'troubling' sale to JPMorgan," Banking Dive, May 19, 2023

[10] Letter from Stephen A. Lybarger, OCC Deputy Comptroller for Licensing, to John H. Tribolati, Secretary, JPMorgan Chase Bank, May 1, 2023, https://www.occ.gov/topics/charters-and-licensing/app-by-jp-morgan-chase-bank.pdf

[11] Abhishek Manikandan, Michelle Price, "JPMorgan to pay $920 million for manipulating precious metals, treasury market," Reuters, Sep 29, 2020, https://www.reuters.com/article/jp-morgan-spoofing-penalty/jpmorgan-to-pay-920-million-for-manipulating-precious-metals-treasury-market-idUSKBN26K325; Brian Flood, "JPMorgan Chase Settles Mortgage Escrow Interest Class Action," Bloomberg Law, May 26, 2021, https://news.bloomberglaw.com/class-action/jpmorgan-chase-settles-mortgage-escrow-interest-class-action; Matt Robinson, "JPMorgan, UBS Brokerage Units Pay SEC Fines for Anti-Identity Theft Programs," Bloomberg, Jul 27, 2022, https://www.bloomberg.com/news/articles/2022-07-27/jpmorgan-ubs-pay-sec-fines-over-anti-identity-theft-programs

[12] Polo Rocha et al., "JPMorgan Chase, FDIC put an end to First Republic's slow bleed," American Banker, May 1, 2023, https://www.americanbanker.com/news/with-first-republic-on-the-brink-all-eyes-are-on-uninsured-deposits

[13] Id.

concentration. Addressing bank consolidation, which has been identified as a “key cause of industrial concentration,” is critical to addressing consolidation not just in finance but across the economy more broadly.[14]

To that end, in his July 2021 Executive Order on Competition, President Biden ordered top financial regulators, including the OCC, to assist the Department of Justice in the “revitalization of merger oversight” under the Bank Merger Act and the Bank Holding Company Act of 1956 in order to “guard against excessive market power.”[15]

While the DOJ and FDIC are currently reviewing their bank merger guidelines, we strongly encourage them to expeditiously complete their review. The OCC and the Federal Reserve are similarly urged to strengthen their merger review process to accomplish this goal. Handing the nation’s most dominant financial firms even more market power is inconsistent with this mission.

Additionally, recent statements indicating the Treasury Department and OCC may be willing to further facilitate bank consolidation are cause for concern, suggesting that the agencies are worryingly out of step with the President’s competition agenda. Recent Senate Banking Committee testimony indicated that the OCC is “committed to being open-minded when considering merger proposals and to acting in a timely manner on applications.”[16] Similarly, the Treasury Department gave some market participants the impression it is advocating further industry consolidation, recent comments at the G7 Summit on May 13, repeated several days later during a private meeting with bank CEOs, reveal.[17] We are concerned that key leaders appointed by the Biden Administration seem to be straying from the President’s own competition priorities, and that these statements amount to a push from the government to the industry to initiate more mergers. Both these developments are unwelcome.

The President has made it clear: it's time to fight consolidation, not facilitate it. In reviewing lessons learned from this most recent banking crisis to better prevent the next one, the regulators must be full-throated and clear in their affirmation that robust regulation and competition, not consolidation, will lead to a healthier, safer, and more vibrant financial system. Banks must exist to serve the needs of the American people, not the other way around – and it is regulators’ critical task to ensure so.

Sincerely,

American Economic Liberties Project

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[14] Jeremy Kress, “Reviving Bank Antitrust,” Duke Law Journal, Feb 2022, https://ssrn.com/abstract=4039197

[15] President Biden statement regarding Executive Order on Promoting Competition in the American Economy, July 9, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order- on-promoting-competition-in-the-american-economy/

[16] Written Testimony of Michael J. Hsu Before the Senate Committee on Banking, Housing and Urban Affairs, May 18, 2023, https://www.banking.senate.gov/imo/media/doc/Hsu%20Testimony%205-18-23.pdf

[17] Doina Chiacu and David Lawder, "Yellen told bank CEOs more mergers may be necessary, CNN reports," Reuters, May 19, 2023, https://www.reuters.com/markets/us/yellen-told-bank-ceos-more-mergers-may-be-necessary-cnn-2023-05-19/; Andrea Shalal, "Yellen expects US regulators to be open to mergers among midsize banks," Reuters, May 12, 2023, https://www.reuters.com/markets/yellen-expects-us-regulators-be-open-mergers-among-midsize-banks-2023-05-13/

American Family Voices
American Federation of Labor and Congress of Industrial Organizations
Americans for Financial Reform
California Reinvestment Coalition
Communications Workers of America (CWA)
Consumer Action
Freedom BLOC
Institute for Local Self-Reliance
Open Markets Institute
P Street
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Public Citizen
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CC:
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