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Thank you Chair Warren and Ranking Member Kennedy for the opportunity to testify today. I want to talk about the dangers of excessive concentration and the need for the banking agencies to swiftly update and more rigorously apply their bank merger review frameworks.

President Biden issued an Executive Order on Promoting Competition in the American Economy that encouraged the banking agencies to review current practices and adopt a plan, no later than 180 days after his issuance of Executive Order to revitalize merger oversight.[1] President Biden's order made it clear: this is the time to fight consolidation, not facilitate it. However, almost two years later, the agencies have yet to publish new guidelines. They have not gotten tougher in the ways needed to stop blithely approving mergers and start conducting robust assessments of bank mergers that properly scrutinize impacts on communities, market competition and financial system stability.

We at Americans for Financial Reform ("AFR") are deeply concerned about concentrated power in banking, and the wave of bank mergers and acquisitions that have facilitated it, mergers and acquisitions approved by the federal bank regulators, not just in the last several years, but over the past few decades. Bank consolidation has produced historically high concentration in the U.S. financial sector. The number of U.S. banks has plummeted from 18,000 in the 1980s to less than 5,000 today.[2] More than three-quarters of local banking markets were considered uncompetitive in 2021, with a Herfindahl-Hirschman Index (HHI) exceeding the DOJ's threshold for "high concentration." Nonetheless, federal bank regulators have not formally rejected a merger application in over 15 years.[3]

On the contrary, approval rates for bank mergers have reached record highs, as the agencies have waved through mergers more quickly than ever.[4] In 2021, the fifth-biggest bank in the country, U.S. Bancorp announced an agreement to acquire MUFG Union Bank for $8 billion.[5] This and other mega mergers have resulted in growing concentration in the banking sector, which, in turn, has harmed consumers and small businesses, undermined financial stability, and negatively impacted consumer privacy.

Civil rights and consumer financial justice organizations including AFR raised concerns about abusive overdraft practices in particular as an example of serious consumer harms that needed to be taken into account, along with systemic risk and consolidation issues, around TD Bank's application to merge with First Horizon. The banks ultimately announced the termination of their merger agreement, citing uncertainty about regulatory approval.

The agencies' history of rubber-stamping bank mergers has come at a cost, with marginalized and rural communities disproportionately affected. The Bank Merger Act and Bank Holding Company Act require the banking agencies to consider the convenience and needs of the community. To fulfill this statutory obligation, regulators need to evaluate holistically how bank consolidation can harm consumers in general and low- and moderate-income ("LMI") neighborhoods in particular, including in light of past experience on how mergers have harmed small businesses, community banks, and households, especially those in BIPOC (Black, Indigenous, and people of color) and rural communities.

Bank mergers have reduced availability of credit, increased fees for basic banking services, and lowered the interest rates offered to depositors.[6] These adverse effects are even more pronounced in communities of color and LMI communities where bank consolidation has led to significant branch closures.[7] The vast majority of bank customers still rely on in-person branches for access to banking services; thus closures allow high-fee check cashing and predatory financial firms to step in.[8] Furthermore, many merging banks have a history of poor consumer protection safeguards.[9]

One study found that Black mortgage applicants are less likely to get mortgages in counties where bank mergers occur and that divestitures from mergers exacerbate racial mortgage disparities.[10] Additionally, merging banks tend to reduce their mortgage lending after completing a deal and the decline in mortgage lending is more pronounced to Black borrowers. A 2020 study found that while merging banks made more loans to prime borrowers, they curtailed lending to subprime borrowers after the merger.[11] These impacts are felt most strongly among Black and Hispanic mortgage applicants and already underserved communities.[12]

Bank mergers continue to drive large numbers of branch closures, and this disparately affects places where few branches existed, especially rural areas and low-income urban areas.[13] Between 2008-2016, 86 new banking deserts were created in rural areas, according to a study by the National Community Reinvestment Coalition (NCRC).[14] An updated study showed that bank mergers account for at least some branch closures. For example, BB&T and SunTrust Banks closed 565 (16.5%) branches nationally due to their merger into what is now Truist Bank.[14]

Additionally, bank mergers have been tied to broader community harms, including increases in evictions, increasing rates of debts sent to collection agencies, and even rising property crimes.[15]

Bank mergers' harmful effects also extend to small businesses. Community banks have traditionally specialized in lending to local entrepreneurs and farmers. When banks consolidate, however, small business lending declines, as bigger banks tend to serve larger commercial customers. Thus, bank mergers have hurt small businesses by reducing the supply of credit,[16] and increasing the cost of credit.[17] Small business lending is particularly affected when a community bank is acquired by a nonlocal bank.[18] Scholars have linked bank consolidation to lower rates of small business formation and adverse effects for their local economies, including decreases in commercial real estate development, new construction, and local property values.[19] Communities affected by bank mergers also suffer rising unemployment, declines in median income, and rising income inequality.[20] These damaging impacts historically have disproportionately disadvantaged people of color, women, people with limited English proficiency as individuals as well as the communities where these people live.

Bank Mergers exacerbate systemic risk. As the Federal Reserve's own research demonstrates, distress at one large bank poses a significantly greater systemic risk than distress at a number of smaller banks with equivalent total assets.[21] Due to recent mergers, PNC, Truist, and Capital One are now bigger than Washington Mutual, Countrywide, and National City when they failed in the 2008 financial crisis.[22] Large bank mergers can exacerbate existing problems, such as the "too-big-to-fail" dynamic, as well as related problems, such as when banks become "too-big-to-manage."[23] Too-big-to-fail describes a firm that is so deeply ingrained in an economy that its failure would be disastrous to that economy. Too-big-to-fail status can distort competition in banking markets by allowing large conglomerates to enjoy more favorable financing than their smaller rivals.[24]

The mergers that came as a result of the 2023 banking crisis further fueled Too-big-to-fail and "Too big to manage" risks. During the 2023 crisis triggered by SVB, the agencies acknowledged systemic risks of mega banks getting too big to manage and the government subsidy in the form of an implicit too-big-to-fail backstop that the government provides to the biggest banks when they or their key markets are in distress.

However, Too-big-to-fail risk was amplified with JPMorgan Chase's acquisition of First Republic, which 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.[25] 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.

As a result, JPMorgan's acquisition of First Republic bank was approved without reckoning with Too-big-to-fail and 'Too-big-to-Manage' risks to the financial system and the public. [26] The American public would be better served by the agencies evaluating 'emergency' sales through a lens broader than just the least cost to the insurance fund, including the resulting effects on financial stability, ability to effectively manage the combined entity, anti-competitive impacts, and other negative economic consequences not beneficial to communities served or the economy. The least cost calculation criteria should also be more transparent.

It is also worth noting that, when the Fed assessed SVB's acquisition of Boston Private Bank in 2018, it discussed the risk to financial stability only qualitatively, did not disclose any quantitative metrics used and did not disclose any assessment of the impact of the merger on the communities that the acquired bank served. The Fed approved SVB's application and, without having shown its work, noted 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." This was a conclusion that subsequent events proved to be quite wrong.

Needed Actions

We strongly urge the banking agencies to act swiftly to strengthen the Bank Merger Guidelines and be full-throated and clear that robust regulation and competition, not consolidation, will lead to a healthier, safer, and more vibrant financial system.

Those opposed would have us believe that we need deregulation to check concentration, pointing to failures to effectively supervise SVB. We disagree. A supervisory failure does not, as some would have us believe, indict all supervision as being ineffective. It argues for stronger regulation and effective supervision. As the Fed's analysis noted, specific DE-regulatory choices, urged by banks and their trade associations, led to the oversight failures that enabled SVB's excessively risky actions and led to its failure. Also regulations to promote competition, level playing fields and oversee systemic risk do not categorically squelch innovation and heterogeneity of business models; they can in fact do the opposite.

As the recent crisis reminded us once again, banks are profoundly subsidized by the public, and they must function to serve the needs of the American people and businesses, not the other way around – and it is regulators' critical task to ensure this is so. We recommend the following actions to reduce the risks of dangerous concentration and promote a safer more competitive financial system:

Banking Agencies

- The banking agencies should pause merger approvals until their Bank Merger Guidelines are strengthened.
- The banking agencies should work together to conduct a retrospective analysis of the impact of prior banking mergers on consumers and communities, including with regard to the costs and prices of banking products, the availability and quality of credit for households and small businesses.
- The banking agencies should fulfill their statutory obligation to determine how a proposed merger will benefit the needs of its community with a robust Community Benefits Assessment. This assessment should consider other relevant factors in addition to a bank's CRA rating such as: guaranteeing that a merger is in the public interest by requiring CFPB approval if consumer products are involved; requiring disclosure of discussions between the institutions and regulators pre-filing of a merger application; requiring regulators to examine the anticompetitive effects on individual products; and requiring an evaluation of merger impact on product quality or potential exploitation of consumers.
- The banking agencies should demand evidence during the merger review process that mergers will produce measurable benefits to impacted consumers such as expanding credit, lowering fees, expanding product offerings and increasing access to low cost bank products and services, especially in BIPOC communities.
- The supervising banking agency(ies) should evaluate, in coordination with federal and state banking agencies, and State AGs, the potential negative impact proposed mergers could have on systemic risk including wholesale investment banking, managerial competence, and compliance with consumer protection and other banking laws.
- The banking agencies should apply appropriate skepticism for banks subject to enforcement actions or with large numbers of consumer complaints at the FTC and the CFPB and coordinate to review the consumer protection and fair lending record of proposed merging banks, the cost structure and availability of account and loan products, the performance serving lower-income applicants and applicants of color in providing mortgage, small business and other loan products.
- The banking agencies and DoJ should more rigorously enforce and monitor Fintech companies and major tech platforms that enter into quasi-banking businesses for anti-trust concerns related to product tying, collusion, vertical mergers and and arrangements as well as horizontal mergers between fintechs.

Department of Justice

- The DoJ should lower the HHI threshold for enhanced scrutiny of proposed mergers.
- The DoJ should determine whether common ownership of banks by large asset managers causes competitive harms in ways not captured in the current HHI analysis.

Federal Deposit Insurance Corp

- The banking agencies and Congress should include consideration of other criteria such as impact on systemic risk and on communities and small businesses. The FDIC should assess ways to improve least cost decision criteria, at a minimum, to make it more transparent.

Federal Reserve

- For any firm offering deposit-like obligations via online platforms, the Federal Reserve or other relevant agency should regulate these products as deposits so they can not be issued without the approval of banking regulators.

To conclude, the above proposals are needed to protect the American public and combat the hands-off approach to merger reviews that has resulted in increased consolidation and inflicted substantial harm on the economy, small businesses and communities, rural and Black, Indigenous, (and) People of Color communities.

Thank you for your time and consideration of these points. We would greatly value your support.

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[1] President Joseph R. Biden. Executive Order on Promoting Competition in the American Economy. July 2021.

[2] As of March 31, 2023, there were 4,096 commercial banks, including 4,096 commercial banks and 576 savings and loan associations in the U.S. insured by the Federal Deposit Insurance Corporation (FDIC) with US$23.7 trillion in assets. "FDIC Quarterly". Federal Deposit Insurance Corporation.

[3] Kress, Jeremy C. "Modernizing Bank Merger Review." 37 Yale Journal on Regulation. 2021.

[4] Supra note 2 at p. 445.

[5] AFR & CRL Letter sent to the Fed on TD Bank/First Horizon Bank Merger & Overdraft Fees (ourfinancialsecurity.org)

[6] Bord, Vitaly M. "Bank Consolidation and Financial Inclusion: The Adverse Effects of Bank Mergers on Depositors." December 2018 at 6-9.; Mark J. Garmaise & Tobias J. Moskowitz. "Bank Mergers and Crime: The Real and Social Effects of Credit Market Competition." 61 J. FIN. 495, 509-14 2006.

[7] Dymski, Gary A. “The Bank Merger Wave: The Economic Causes and Social Consequences of Financial Consolidation.”Review of Industrial Organization. Vol. 19. No.4. Pgs 249-50. December 2001.

[8] Supra note 7. Bord. Pgs 23-25.

[9] Dymski, Gary A. “The Bank Merger Wave: The EconomicCauses and Social Consequences of Financial Consolidation.”Review of Industrial Organization. Vol. 19. No.4. Pgs 249-50. December 2001.

[10] Gam, Yong Kyu and Yunqi Zhang. Southwestern University of Finance and Economics and Nankai University. “Dismembered Giants: Bank Divestitures, Local Lending,and Housing Markets.” 55th American Real Estate andUrban Economics Association. January 2019. Pgs 4 and 41.

[11] Ratnadiwakara, Dimuthu and Vijay Yerramilli. Louisiana State University and University of Houston. “Effect of Bank Mergers on the Price and Availability of Mortgage Credit.” September 2020. Pg. 21.

[12] *Id* at pg 1 and pg 6.

[13] Jad Edlebi. NCRC Research. “Bank Closure Update (2017-2020).”Accessed September 2022.

[14] NCRC. “Bank Branch Closures from 2008-2016: Unequal Impact in America’s Heartland.” Accessed September 2022. Supranote 7.

[15] Supra note 7. Bord, Pgs 30-32; Garmaise & Moskowitz, Pgs 518-523.

[16] Berger, Allen N. et al. “The Effects of Bank Mergers and Acquisitions on Small Business Lending.” 50 J. FIN. ECON. 187, 217, 222 1998; Craig, Steven G. & Pauline Hardee. “The Impact of Bank Consolidation on Small Business Credit Availability, 31 Journal of Banking & Finance” 1237, 1248-58. 2007; Sapienza, Paola. “The Effects of Banking Mergers on Loan Contracts.” 57 Journal of Finance 329, 364 2002.

[17] Supra note 7. Garmaise & Moskowitz, Pg 515; Supra note 12, Sapienza, Pgs 329, 364.

[18] Jagtiani, Japa & Raman Quinn Maingi. “How Important Are Local Community Banks to Small Business Lending? Evidence from Mergers and Acquisitions.” Pgs 18-20. Working Paper. Revised August 2019

[19] Supranote 7. Garmaise & Moskowitz, Pg 515.

[20] Id at pg 518.

[21] Lorenc, Amy G. & Jeffery Y. Zhang. “The Differential Impact of Bank Size on Systemic Risk” Fed. Reserve Bd. Fin. & Econ. Discussion Series, Working Paper No. 2018-066, 2018. Pgs 12-18

[22] Wilmarth, Arthur E. “Raising SIFI Threshold to $250BIgnores Lessons of Past Crises.” American Banker.Feb 2018.

[23] Kress, Jeremy C. Kress, “Solving Banking’s “Too Big to Manage Problem.” 104 Minnesota Law Review 171.2019. Pgs 186-192.; Menard, Lev. “Too Big to Supervise: The Rise of Financial Conglomerates and the Decline of Discretionary Oversight in Banking”, 103 Cornell Law Review, Pgs 1527, 1583. 2019.

[24] Balasubramnian, Bhanu & Ken B. Cyree. “Has Market Discipline Improved After the Dodd-Frank Act?”, 41 Journal of Banking & Finance. Pgs 155, 165. 2014; Acharya, Viral V. et al. Working Paper No. 79700. “The End of Market Discipline? Investor Expectations of Implicit Government Guarantees.” February2016. Pgs 30–33.

[25] First Republic (FRC) May Be Best JPMorgan (JPM) Deal in Decades, Dick Bove Says - Bloomberg, Breanna Bradham, May 1, 2023.