October 14, 2022

The Honorable Michael Barr
Vice Chair for Supervision
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C.

The Honorable Martin Gruenberg
Acting Chair of the Board
The Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C.

The Honorable Michael Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th St. SW
Washington, D.C.

Dear Vice Chair Barr, Acting Chair Gruenberg, and Acting Comptroller Hsu:

The undersigned organizations write to urge you to move swiftly to update the bank merger review framework. President Joe 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 the EO to revitalize merger oversight.[1] We applaud the FDIC for taking the crucial step to issue a request for comment related to the Bank Merger Act.[2] However, it has been over a year since the EO was issued and only the FDIC has taken public action to update their merger framework. We urge all three agencies, especially with the recent confirmation of Vice Chair Barr, to soon formally review and strengthen their bank merger guidelines.

We are deeply concerned about the wave of bank mergers and acquisitions that have been approved by the federal bank regulators in the last several years. 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. More than three-quarters of local banking markets are considered uncompetitive, 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]

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[1] President Joseph R. Biden. Executive Order on Promoting Competition in the American Economy. July 2021.
[2] Federal Deposit Insurance Corporation. FDIC Request for Information on Bank Merger Act. March 2022.
[3] Kress, Jeremy C. “Modernizing Bank Merger Review.” 37 Yale Journal on Regulation. 2021.

Approval rates for bank mergers have reached record highs, while the agencies wave through mergers more quickly than ever.[4] Last fall, the fifth-biggest bank in the country, U.S. Bancorp, announced an agreement to acquire MUFG Union Bank for $8 billion. More recently, TD Bank has also applied to merge with First Horizon Bank.[5]

These and other 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. We outline below some of the costs to small businesses and local communities from bank mergers and provide recommendations on how to strengthen the Bank Merger Guidelines.

Marginalized and Rural Communities Adversely Affected by Mergers

The laissez-faire stance by the regulators towards bank mergers and the inadequacies in the current Bank Merger Competitive Review Guidelines (the "Bank Merger Guidelines") have hurt small businesses, community banks, and households, especially those in BIPOC (Black, Indigenous, and people of color) and rural communities. 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.[6]

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.[7] These impacts are felt most strongly among Black and Hispanic mortgage applicants and already underserved communities[8].

Bank mergers continue to drive large numbers of branch closures and this disparately affects places where few branches existed, especially rural and low-income urban areas.[9] Between 2008-2016 86 new banking deserts were created in rural areas, according to a study by the National Community Reinvestment Coalition (NCRC).[10] 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.[11]

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[4] *Supra* note 2 at pg 544.

[5] Americans for Financial Reform Ed Fund & Center for Responsible Lending. Letter to Federal Reserve to Reject the TD Bank and First Horizon Bank Merger. August 2022.

[6] 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 and Urban Economics Association. January 2019. Pgs 4 and 41.

[7] 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.

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

[9] Jad Edlebi. NCRC Research. "Bank Closure Update (2017-2020)." Accessed September 2022.

[10] NCRC. "Bank Branch Closures from 2008-2016: Unequal Impact in America's Heartland." Accessed September 2022.

[11] *Supra* note 7.

Bank Consolidation's Harmful Effects on Consumers
Bank mergers have reduced availability of credit for consumers, increased fees for basic banking services, and lowered the interest rates offered to depositors.[12] These adverse effects are even more pronounced in communities of color and low- and moderate-income communities where bank consolidation has led to significant branch closures.[13] 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.[14] Furthermore, many merging banks have a history of poor consumer protection safeguards.[15] For this reason, we ask that the request for comment includes questions on how to systematically consult the Consumer Financial Protection Bureau (CFPB) in its merger evaluation process.

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 has harmed consumers and LMI neighborhoods. 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.[16]

Bank Mergers Harmful Effects on Small Businesses
Bank consolidation has also harmed 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,[17] increasing the cost of credit, and shrinking the average loan size.[18] Small business lending is particularly affected when a community bank is acquired by a nonlocal bank.[19] 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

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[12] 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.
[13] 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.
[14] *Supra* note 7. Bord. Pgs 23-25.
[15] *Supra* note 6. Pgs 2-4; Center for Responsible Lending. Joint Letter Urging OCC to Curb Overdraft Abuse. October 2010.
[16] *Supra* note 7. Bord, Pgs 30-32; Garmaise & Moskowitz, Pgs 518-523.
[17] 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.
[18] *Supra* note 7. Garmaise & Moskowitz, Pg 515; *Supra* note 12, Sapienza, Pgs 329, 364.
[19] 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.

local property values.[20] Communities affected by bank mergers also suffer rising unemployment, declines in median income, and rising income inequality.[21] 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

Bank consolidation has also increased risks to financial stability. 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.[22] 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.[23] 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."[24] Too-big-to-fail status can also distort competition in banking markets by allowing large conglomerates to enjoy more favorable financing than their smaller rivals.[25] To date, the Bank Merger Guidelines have not considered these effects.

In sum, a hands-off approach to bank merger reviews has resulted in increased bank consolidation that has inflicted substantial harm on the economy, on small businesses, and communities, particularly low- and moderate income communities, rural, and BIPOC communities. We strongly urge you to act swiftly to strengthen the Bank Merger Guidelines.

Sincerely,

20/20 Vision
Action Center on Race & the Economy (ACRE)
AK PIRG
American Economic Liberties Project
Americans for Financial Reform Ed Fund
Better Markets
California Reinvestment Coalition
Center for American Progress

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[20] *Supra* note 7. Garmaise & Moskowitz, Pg 515.
[21] *Id* at pg 518.
[22] 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.
[23] Wilmarth, Arthur E. "Raising SIFI Threshold to $250B Ignores Lessons of Past Crises." American Banker. Feb 2018.
[24] 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.
[25] 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." February 2016. Pgs 30–33.

Center for LGBTQ Economic Advancement & Research (CLEAR)
Center for Responsible Lending
Committee for Better Banks
Consumer Action
Delaware Community Reinvestment Action Council, Inc.
Empire Justice Center
Honor the Earth
Institute for Agriculture & Trade Policy
Mountain State Justice, Inc.
National Consumer Law Center (on behalf of its low income clients)
National LGBTQ Task Force
New Jersey Citizen Action
Open Markets Institute
Public Citizen
South Carolina Appleseed Legal Justice Center
The Greenlining Institute
The ONE LESS FOUNDATION
The Revolving Door Project
U.S. PIRG
Virginia Organizing
Woodstock Institute

Copy to:
The Honorable Janet Yellen, Secretary of the Treasury
The Honorable Ron Klain, Chief of Staff to the President
The Honorable Jonathan Kanter, Assistant Attorney General