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CHAIRWOMAN

United States House of Representatives
Committee on Financial Services
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PATRICK MCHENRY, NC
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July 15, 2021

The Honorable Jerome H. Powell
Chair
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue NW
Washington, D.C. 20551

Chair Powell:

I am writing to express support for President Biden's executive order (EO), issued on July 9, which encourages the Federal Reserve and other banking agencies to "update guidelines on banking mergers to provide more robust scrutiny of mergers."[1] Last December, I urged then President-elect Biden to "be aggressive and use the tools at your disposal to strengthen the merger and acquisition and anti-trust review process to end the era of the government blindly rubber stamping those applications."[2] As President Biden has indicated, economic concentration in the banking sector has had harmful economic effects, including by causing thousands of branch closures that disproportionately impact rural areas and communities of color. With this in mind, I am very concerned that, according to a recent story in the *Capitol Forum,* the Federal Reserve is "quietly pushing ahead with a plan to loosen bank merger rules."[3] The *Capitol Forum's* reporting suggests that the Fed is planning to move in the opposite direction from President Biden's EO, further relaxing already-inadequate bank merger standards in a manner that will hurt consumers and small businesses, and may undermine financial stability.

Research has shown the harmful effects of bank consolidation. Healthy small banks are critical for small business development.[4] There is substantial evidence that bank consolidation makes basic financial services less accessible and more expensive for consumers, with especially severe consequences in low-income communities of color.[5] In some cases, this research has been produced by the Federal Reserve itself. For instance, a 2018 paper by researchers at the Federal Reserve Bank of Philadelphia found that "The absence of local community banks that became a target of a merger or acquisition by nonlocal acquirers has, on average, led to local [small business lending] credit gaps that were not filled by the rest of the banking sector."[6] The same year, researchers at the Fed concluded that the collapse of one $250 billion bank would produce more harmful economic effects than the collapse of five separate $50 billion banks.[7]

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[1] The White House, *Fact Sheet: Executive Order on Promoting Competition in the American Economy*, (Jul. 9, 2021).
[2] House Financial Services Committee, *Waters Provides Recommendations to President-Elect Biden on Trump Actions to Reverse* (Dec. 4, 2020).
[3] The Capitol Forum, *Federal Reserve Wants to Ease Bank Merger Review Standards; seeks DOJ buy-in,* (May 17, 2021).
[4] *See* Berger, Saunders, Udell, and Scalise, *The Effects of Bank Mergers and Acquisitions on Small Business Lending,* (Nov. 1998); Craig and Hardee, *The impact of bank consolidation on small business credit availability*, (Apr. 2007); Sapienza, *The effects of bank mergers on loan contracts,* (Dec. 2002).
[5] Vitaly M. Bord, *Bank Consolidation and Financial Inclusion: The Adverse Effects of Bank Mergers on Depositors*, (Dec. 1, 2018).
[6] Federal Reserve Bank of Philadelphia, *How Important Are Local Community Banks to Small Business Lending,* (June 2018).
[7] Lorenc and Zhang, *The Differential Impact of Bank Size on Systemic Risk*, (2018).

In light of these findings, it is deeply troubling that the Fed continues to "rubber stamp" bank merger applications. In recent years, bank merger approval rates have grown as high as 95%, and the Fed has not intervened to reject a bank merger application since 2003.[8] Not only is the Fed approving nearly all merger proposals, but it is acting with record speed. Previously, the Fed has taken nearly a full year, on average, to review bank mergers that attract adverse public comment. Under your leadership, the Fed has signed off on such applications in an average of four months.[9] Moreover, even as the timeline for merger approval has accelerated, opportunities for public input have been curtailed. Public meetings convened by the Fed regarding pending mergers have been rare in recent years. While I was pleased the Fed convened two public meetings to consider the merger of BB&T and SunTrust after I raised the issue with you, I am disappointed those have been the only public meetings convened by the Fed over the past 6 years regarding proposed mergers and acquisitions (M&A), even though the Fed has greenlighted many other large M&A applications during that time.[10] Providing the public, including affected workers, consumers, and small businesses, an opportunity to speak directly with Fed officials at a public meeting regarding major proposed mergers will only enhance the Fed's review process going forward.

Unfortunately, the *Capitol Forum* story suggests that the Fed is considering further lowering its standards for approving bank mergers. The Fed is reportedly debating expanding its "safe harbor" for merger reviews so that only mergers that increase regional market concentration as measured by the Herfindahl Hirschman Index (HHI) to a HHI of 2500 are seriously scrutinized, and is also weighing broadening the definition of competitive markets to include credit unions and fintech firms. These changes would permit even greater local market concentration beyond the 1995 bank merger guidelines, which have proved inadequate to prevent harmful consequences to consumers. For example, the Fed approved a merger between BB&T and SunTrust in 2019 despite the HHIs in several markets approaching or exceeding 2500 and 70% of deposits in the city of Atlanta now being held at banks headquartered outside of the state.[11] Moreover, the rise of fintech and online banking should not be seen as a substitute for retail branches, which have declined rapidly over the last decade, with harmful repercussions for small business and mortgage lending.[12]

The Fed's merger review process has other major deficiencies. Earlier this year, the Fed allowed PNC to grow to a $556 billion institution, despite a 2017 finding by bank regulators that PNC's anti-money laundering practices were so flawed that it no longer met the standard for being "well-managed," and despite PNC's 2019 admission that it had lost track of certain stock holdings and fallen afoul of regulatory requirements.[13] Although Vice Chair Quarles suggested in testimony in May that the Fed considers branch closures in analyzing mergers,[14] the orders approving recent mergers show that high numbers of branch closures are not a major factor in the Fed's reviews.[15] In addition to insufficient branch closure analysis, the Fed also does very little to analyze the public benefits that mergers will bring to communities. For example, in opposing the pending acquisition

[8] Jeremy C. Kress, *Modernizing Bank Merger Review,* (2020).
[9] Jeremy Kress, *Fed is a rubber stamp for bank mergers—It's a problem* (Apr. 10, 2019).
[10] Federal Reserve Board of Governors, *Public Meeting Transcripts,* (May 3, 2019).
[11] National Black Farmers Association, *Objection to proposed merger of SunTrust Banks, inc. And BB&T Corporation,* (Mar. 20, 2019).
[12] National Community Reinvestment Coalition, *Relationships Matter: Small Businesses and Bank Branch Locations,* (2021).
[13] The Capitol Forum, *PNC's Money-Laundering Lapses, Consumer Failings Cast Shadow Over Merger,* (Dec. 4, 2020).
[14] Senate Banking Committee, *The Semiannual testimony on the Federal Reserve's Supervision and Regulation of the Financial System,* (May 25, 2021).
[15] Federal Reserve Board of Governors, *Order approving the acquisition of a bank holding company,* (May 25, 2021).

by the Orange County-based Banc of California, the California Reinvestment Coalition (CRC) and Greenlining Institute (GLI) pointed out that the acquisition application lacked sufficient information for the Fed to properly evaluate whether the Banc's policies were fostering affordable housing and community lending, or furthering displacement.[16] The CRC and GLI also noted that Banc of California's collection of overdraft fees in 2020 exceeded its philanthropic giving.[17]

Bank consolidation also threatens financial stability. Following the 2008 financial crisis, many of the megabanks that required emergency assistance got even bigger. Each of the global systemically important banks (G-SIBs) are larger today than they were in 2008. To name just one example from this period, Wells Fargo acquired Wachovia at the height of the 2008 crisis, then continued to grow and expand its business in the years that followed. A 2020 Financial Services Committee staff report found that Wells Fargo's relentless pursuit of growth, even after regulators warned that growth through M&A and new products should not be an area of focus, contributed to the management failures that ultimately prompted the Federal Reserve to sanction Wells Fargo for egregious consumer abuses.[18] While implementing the Federal Reserve's approach to post-crisis regulation in 2012, former Federal Reserve Governor Daniel Tarullo stated that he would apply a "significant presumption against acquisitions" by G-SIBs.[19] Nevertheless, the Fed approved the acquisition of E*Trade by Morgan Stanley last September. As a result of that acquisition, each of the six largest banks in the country now control over $1 trillion in assets.

M&A activity is sometimes necessary to ensure that lending continues to flow in certain communities, as illustrated by the emergency M&A activity during the 2008 crisis and other instances where smaller banks faced failure or collapse. However, through its lax oversight of bank mergers in recent decades, the Fed has overlooked its statutory instruction from Congress to consider whether M&A activity ensures that "the convenience and needs of the community" are served.[20] By modernizing its bank merger review process and strengthening oversight, the Fed can move to a framework that more effectively differentiates between M&A activity that serves the public interest and M&A activity that does not.

It is particularly concerning that the Fed's "rubber stamp" approach to mergers and acquisitions even for G-SIBs has continued unabated during a period when the economy is so fragile. Since the onset of the COVID-19 pandemic, there has been speculation that the job loss, business distress, and disruption of the pandemic would lead to a M&A wave and increased activity from private equity firms and other financial institutions. With these forecasts in mind, I warned early on that the Fed and other prudential regulators should not use the pandemic as an excuse to deregulate,[21] and several of my colleagues suggested that a ban on M&A activity through the duration of the pandemic may be needed.[22] As the economic recovery has begun to pick up in recent months, many of these predictions have come to pass, with the first quarter of 2021 setting

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[16] California Reinvestment Coalition, *GLI and CRC Oppose Bank of CA Application to Merge*, (June 10, 2021)
[17] Id.
[18] House Financial Services Committee Majority Staff Report, *The Real Wells Fargo: Board and Management Failures, Consumer Abuses, and Ineffective Regulatory Oversight*, (Mar. 2020).
[19] Governor Daniel Tarullo, *Financial Stability Regulation*, (Oct. 10, 2012).
[20] Jeremy C. Kress, *Modernizing Bank Merger Review,* (2020).
[21] House Financial Services Committee, Waters Announces Committee Plan for Comprehensive Fiscal Stimulus and Public Policy Response to Coronavirus Pandemic, (Mar. 18, 2020).
[22] Politico, *House antitrust chairman proposes merger ban during pandemic*, (Apr. 23, 2020).

a new record for M&A activity,[23] and an April 2021 *Wall Street Journal* article reporting that private equity firms are looking to spend $1.6 trillion on "giant buyouts."[24]

Rather than weakening bank merger standards, the Fed should instead strengthen its outdated merger review framework to better protect consumers and the broader financial system. The banking industry has changed significantly since 1995, when the current merger review framework was written. The 2008 financial crisis and the severe recession caused by the COVID-19 pandemic have both exacerbated the long-standing trend of bank consolidation. There are also major concerns about Big Tech and other digital companies moving into the banking sector, blurring the lines that have traditionally separated banking and commerce. In recent months, the Financial Services Committee has heard expert testimony concerned that "the same high levels of concentration that afflict certain retailing and tech markets would cross over into financial services markets."[25] All of these factors suggest that it is now necessary to strengthen, rather than weaken, the Fed's antitrust framework. That was precisely the objective behind President Biden's EO issued last week.

In May, Governor Lael Brainard suggested the need for a "broader review" of the Fed's bank merger framework in a statement issued following the Board's approval of PNC's acquisition of BBVA's U.S. assets, citing the recent increase in concentration among banks with between $250 billion and $700 billion in assets.[26] I share these concerns about the consolidation trend among large regional banks, especially since these same banks saw a host of deregulatory actions during the Trump administration. As Governor Brainard has pointed out, "even noncomplex banks in this size range can pose risk to the financial system." The Fed's bank merger framework should not encourage the formation of even more potentially-systemic banks.

Now is not the time for the Fed to weaken a merger review process that is already on autopilot. I urge you strongly to consult with the House Financial Services and Senate Banking Committees, as well as the Department of Justice, antitrust experts, and a wide range of community, consumer, and small business organizations, and heed President Biden's call to strengthen rather than weaken the Fed's approach.

Sincerely,

Maxine Waters

MAXINE WATERS
Chairwoman

CC: The Honorable Patrick McHenry, Ranking Member

[23] Bloomberg Law, *Cross-border M+A defied the pandemic in a record Q1*, (Apr. 26, 2021).
[24] Wall Street Journal, *Private equity firms regain taste for giant buyouts*, (Apr. 21, 2021).
[25] House Financial Services Subcommittee on Consumer Protection and Financial Institution, *Testimony of Erik F. Gerding*, (Apr. 15, 2021).
[26] Governor Lael Brainard, *Statement on PNC/BBVA Application by Governor Lael Brainard*, (May 14, 2021).