MAXINE WATERS, CA
CHAIRWOMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

PATRICK MCHENRY, NC
RANKING MEMBER

December 10, 2021

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

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Mr. Michael Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
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Chair Powell, Chairman McWilliams, and Acting Comptroller Hsu:

Earlier this year, I wrote in support of President Biden's July 9 Executive Order (EO) 14036 to promote competition,[1] which, among other things, encourages the Board of Governors of the Federal Reserve System (Fed) and other banking agencies to "update guidelines on banking mergers to provide more robust scrutiny of mergers."[2] In response to my letter, Chair Powell indicated that the Fed is "coordinating with the Attorney General and the heads of other federal banking agencies to explore ways to further enhance our bank merger framework to ensure it promotes competition, innovation, and consumer choices." Related, a majority of the Federal Deposit Insurance Corporation (FDIC) Board issued a "Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions."[3] While these reviews are ongoing, I call on the Fed, FDIC, and Office of the Comptroller of the Currency (OCC) to impose a moratorium on approving any large merger and acquisition (M&A) application resulting in a banking entity that would have more than $100 billion in total assets.[4] I also urge your agencies to incorporate into your updated M&A review procedures a stipulation that you will always hold public hearings on any large bank M&A application, and that your agency seeks the approval of the Financial Stability Oversight Council (FSOC) and other relevant agencies, including the Consumer Financial Protection Bureau (CFPB), to ensure the resulting

[1] White House, Executive Order on Promoting Competition in the American Economy (Jul. 9, 2021).
[2] Chairwoman Maxine Waters, *Waters Applauds President Biden's Executive Order to Examine Bank Merger Practices, Urges Federal Reserve to Strengthen Merger Reviews*, (Jul. 15, 2021).
[3] *Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions* (Dec. 9, 2021). *Also see* Joint Statement of Martin J. Gruenberg and Rohit Chopra, Members, FDIC Board of Directors, *Request for Public Comment on the Bank Merger Act* (Dec. 9, 2021), and Rohit Chopra, *How Should Regulators Review Bank Mergers?* (Dec. 9, 2021).
[4] Stress testing and other enhanced prudential standards begin to be applied to banks of that scale given their systemic importance. *See, e.g.,* Fed, *Dodd-Frank Act Stress Test 2021: Supervisory Stress Test Results* (June 2021), and Federal Reserve, *Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations*, Federal Register (Nov. 1, 2019).

entity from a large M&A deal does not enhance risks to consumers or the stability of the financial system.

When the Fed approved PNC's acquisition of BBVA's domestic assets a few months before, Governor Lael Brainard suggested the need for such a review of the Fed's merger review policies, citing the recent increase in concentration among banks with between $250 billion and $700 billion in assets.[5] Other past and pending M&A deals involving combinations of BB&T with SunTrust Bank,[6] First Citizens with CIT, and U.S. Bank with MUFG Union Bank fit a concerning pattern of large regional bank consolidation that has accelerated in recent years.

To take one example, if regulators were to quickly approve the proposed U.S. Bank-MUFG Union Bank merger, U.S. Bank's total assets would grow to more than $650 billion, solidifying its place as the fifth largest bank in the United States.[7] The deal would significantly expand U.S. Bank's presence throughout the West Coast, increasing its customer base by over 1 million people.[8] More than 60 community-based organizations led by the California Reinvestment Coalition (CRC) have criticized the proposed merger and urged the Fed and OCC to hold public hearings given the merger's potential impact on rural communities and communities of color.[9] While U.S. Bank has committed to maintaining service to low-and-moderate income consumers, keeping MUFG Union Bank's small business portfolio, and retaining all of MUFG Union Bank's front-line branch employees, voluntary commitments announced in relation to a merger "are not always legally binding" and "can be difficult to enforce."[10] Moreover, considerable evidence has demonstrated bank consolidation impairs small business lending,[11] financial inclusion,[12] financial stability,[13] and financial institution workers' rights.[14]

Improving the bank merger review process is a priority I have previously raised, including in a letter to then President-elect Joseph Biden a year ago.[15] The Federal Reserve's response to President Biden's EO and review of its merger review framework is a welcome development, since the existing guidelines have not been updated since 1995. The current framework has contributed to lax oversight by the Department of Justice (DOJ) and by the Fed, which has not denied a bank merger since 2003.[16] Scholars and regulators have written about the need for a stronger framework, including through lowering the concentration thresholds for enhanced scrutiny of mergers, more

[5] Governor Lael Brainard, *Statement on PNC/BBVA Application by Governor Lael Brainard*, (May 14, 2021)
[6] See Committee hearing, *The Next Megabank? Examining the Proposed Merger of SunTrust and BB&T* (Jul. 24, 2019)
[7] Federal Reserve Board of Governors, *Large Commercial Banks* (accessed Dec. 6, 2021).
[8] US Bancorp, *US Bancorp to Acquire MUFG Union Bank,* (Sept. 21, 2021).
[9] CRC, *The Anti-Eviction Mapping Project, Esperanza Community Housing Corporation, Fair Housing Council of the San Fernando Valley, Inclusive Action for the City, and The Greenling Institute, among the groups calling for a 'strong commitment' from U.S. Bank* (Nov. 9, 2021).
[10] Terri Friedline et al., *The Promises and Perils of Community Benefit Agreements: Evidence from Public Comments to a Large Bank Merger* (2020).
[11] *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).
[12] Vitaly M. Bord, *Bank Consolidation and Financial Inclusion: The Adverse Effects of Bank Mergers on Depositors,* (Dec. 1, 2018).
[13] Gregor N.F. Weiss et al., *Systemic Risk and Bank Consolidation: International Evidence* (2014).
[14] House Committee on Financial Services, Testimony of Desiree Jackson, *The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System*, 117th Cong. (Sept. 29, 2021).
[15] Press Release, *Waters Provides Recommendations to President-Elect Biden on Trump Actions to Reverse* (Dec. 4, 2020).
[16] Jeremy C. Kress, *Modernizing Bank Merger Review*, (2020).

rigorous evaluation of financial stability risks, and consideration of potential conflicts of interest, which is especially important as a range of markets are becoming more concentrated.[17] Moreover, my Committee's investigation of the corporate practices that led to Wells Fargo's rampant consumer abuses identified the bank's previous mergers was a contributing factor to Wells Fargo's toxic sales culture, underscoring the need to strengthen the M&A regulatory review process.[18]

Last month, the Senate confirmed Jonathan Kanter to lead the DOJ's antitrust division. With Assistant Attorney General Kanter now in place, I look forward to receiving an update on your efforts to strengthen your M&A approval process, including your collaboration with the DOJ in this regard. While this review is underway, I urge you to exercise prudence, halting approval of large pending M&A applications until a wholesale review and revision of your agency's respective M&A review procedures is finalized. I also urge your agencies to host a public discussion of the renewed merger framework. Your updated procedures should include automatic public hearings for large bank M&A deals, such as the proposed acquisition of MUFG Union Bank by U.S. Bank, as well as seeking approval from FSOC and CFPB to ensure the resulting entity does not increase risks to consumers or the financial system. Postponing decisions on pending mergers until the review is completed will help ensure that a regulatory landscape that promotes the "healthy, vibrant, and competitive banking markets" that Chair Powell has expressed support for is put in place.

Sincerely,

Maxine Waters

MAXINE WATERS
Chairwoman

cc: The Honorable Patrick McHenry, Ranking Member
The Honorable Janet Yellen, Secretary, U.S. Department of the Treasury
The Honorable Merrick B. Garland, Attorney General, U.S. Department of Justice
The Honorable Jonathan Kanter, Assistant Attorney General, Antitrust Division, U.S. Department of Justice
The Honorable Richard H. Clarida, Vice Chair, Federal Reserve
The Honorable Lael Brainard, Governor, Federal Reserve
The Honorable Randal K. Quarles, Governor, Federal Reserve
The Honorable Michelle W. Bowman, Governor, Federal Reserve
The Honorable Christopher J. Waller, Governor, Federal Reserve
The Honorable Martin J. Gruenberg, Director, FDIC
The Honorable Rohit Chopra, Director, CFPB

[17] Federal Trade Commission, *Comment of Commissioner Chopra and Professor Jeremy Kress on the US Department of Justice's Bank Merger Competitive Review Guidelines,* (Oct. 16, 2020).
[18] House Financial Services Committee Majority Staff Report, *The Real Wells Fargo: Board and Management Failures, Consumer Abuses, and Ineffective Regulatory Oversight,* (Mar. 2020).