THE GREENLINING INSTITUTE
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May 31, 2022

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
1776 "F" Street, NW
Washington, DC 20006
Sent via email: Comments@fdic.gov

Re: Request for Comment on Rules, Regulations, Guidance, and Statement of Policy on Bank Merger Transactions (RIN 3064–ZA31)

To Whom It May Concern:

The Greenlining Institute appreciates this opportunity to comment on the request for information regarding bank merger transactions. We will respond based on feedback we have received from Greenlining Coalition members and our experience intervening in mergers and acquisitions of banks with outsized impacts on California. In the last two years, Greenlining, alongside our partners, has intervened in seven mergers – coordinating meetings with the top executives of these banks and community-based organizations, calling for public hearings, and negotiating community benefits agreements that hold these new institutions accountable to low-income communities and communities of color.

Founded in 1993, The Greenlining Institute works toward a future when communities of color can build wealth, live in healthy places filled with economic opportunity, and are ready to meet the challenges posed by climate change. We proactively drive investments and opportunities into communities of color alongside a coalition of over 40 grassroots, community-based organizations, including minority business associations, community development corporations, and civil rights organizations. Our multifaceted advocacy efforts address the root causes of racial, economic, and environmental inequities to meaningfully transform the material conditions of communities of color in California and across the nation.

In January 2022, The Greenlining Institute signed on to the National Community Reinvestment Coalition's letter to the FDIC expressing support for greater scrutiny of bank merger applications. As bank mergers continue to rise, we see the harmful effects of consolidation through the creation of bigger banks that increase risk to the financial system, the closure of bank branches in low-income communities and communities of color that decrease access to critical banking services, and the reduction of Community Reinvestment Act obligations. It is critical that the federal agencies modernize the standards by which they analyze merger applications and take into greater consideration whether a merger is in the public interest and presumes public engagement in the process.

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Comments to Relevant Questions

Question 4: ***Convenience and Needs:*** *To what extent should the convenience and needs factor be considered in acting on a merger application? Is the convenience and needs factor appropriately defined in the existing framework? Is the reliance on an insured depository institution's successful Community Reinvestment Act performance evaluation record sufficient? Are the convenience and needs of all stakeholders appropriately addressed in the existing regulatory framework? To what extent and how should the convenience and needs factor take into consideration the impact the branch closings and consolidations may have on affected communities?*

The Bank Merger Act requires the federal regulatory agencies to consider how a proposed merger will meet the convenience and needs of the community it plans to serve. This factor is critical to considering if the merging institution can safely and adequately meet community credit needs and if the merger will provide a public benefit.

Prior performance on a CRA exam is *not sufficient* to evaluate whether a merger will meet the convenience and needs of a community. First, we believe a more robust consideration of prior CRA performance should be conducted in order to evaluate whether a financial institution has previously met the credit needs of low- and moderate-income income communities. And second, while past CRA performance is a possible indicator of future CRA performance, it does not guarantee good future performance on the CRA. After a merger, CRA performance may decline due to the closure of bank branches, changes in community reinvestment staff, or reduction of frontline branch staff.

The closure of bank branches due to mergers and consolidation is especially detrimental in low- and moderate-income income communities where branch access is critical to meeting credit needs and mobile banking services are unable to meet the demand for lost services. In the past 12 years, branch presence has significantly declined as traditional financial institutions have begun conducting more and more business online. A study by the National Community Reinvestment Coalition found that the recent pace of branch decline — an average of 1,467 branch closures a year — is up from an average of around 800 branch closings a year between 2008 and 2017. From 2017 to 2020, the U.S. lost about 5% of its bank branches.[1] Bank closures primarily impact low-and moderate income communities because a bank closure in a low- and moderate-income income neighborhood relieves a bank from its CRA investment obligations, severes relationships between banks and local businesses and consumers, and eliminates local jobs. In addition, branch closures in low- and moderate-income income communities and communities of color steer consumers towards predatory, non-bank lenders for access to credit.
Sufficient review of a merger application must include thorough review of past CRA performance *in addition* to assessing the likely effect of a merger on future CRA performance, including the percent of branch closures in low- and moderate-income communities as a result of the merger. Oftentimes,

[1] https://ncrc.org/research-brief-bank-branch-closure-update-2017-2020/

merger applications include a future "CRA plan" and while we believe these plans should be required, we also assert that they must be developed with community input of the new service area they will be entering. Community organizations are the experts around the needs of specific neighborhoods and best understand the impact a merger will have on accessing mortgages and small business loans, basic banking services, community investments, philanthropy, and managing critical relationships between branch staff and consumers.

Another way for the federal agencies to determine if a merger meets the convenience and needs of the community and will lead to public benefits is to assess whether the bank has submitted a past or future community benefits agreement. Community benefits agreements include intentional and measurable commitments to underserved communities and can demonstrate if a bank has sufficiently met community credit needs, that the bank will meet the convenience and needs of communities going forward, or that this merger will provide a public benefit. If a bank has previously entered into a community benefits agreement or has negotiated a community benefits agreement for the current merger, federal agencies should consider those agreements when determining if a merger application promotes the public interest. Further scrutiny of these important agreements will empower communities to negotiate future agreements and benefit from mergers in ways that they currently do not.

Question 7: Presumption of Approval: *Does the existing regulatory framework create an implicit presumption of approval? If so, what actions should the FDIC take to address this implicit presumption?*

Bank mergers can influence a community's access to credit and basic banking services, which means that community organizations should comment and intervene around merger applications. However, the existing regulatory framework acts as a "rubber stamp" – community organizations see little benefit in commenting on merger applications because regardless of their input, mergers move forward with regulatory approval and rarely is a merger application rejected.

In order to eliminate this implicit presumption of approval, the FDIC must lengthen the comment period, require public hearings, and increase public awareness in order to create opportunities for more constructive community dialogue around the impact of mergers. In the merger process, public engagement should be presumed and financial institutions should expect to answer questions about the impact of a merger with a diverse set of stakeholders. Specifically, it is important that community-based organizations share the lived experiences of the people they serve. The opportunity for equitable and accessible public comment provides both federal agencies and financial institutions with insight on the true impact of bank mergers on communities on the ground. For example, while financial institutions often think they can mitigate the impact of branch closures through online and mobile banking, they may not realize that the digital divide and limited broadband access in communities of color prevents consumers from accessing alternatives to physical branches.

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Currently, the regulatory deadline for comment of 30 days is far too short and does not allow sufficient time to make meaningful progress in the discussions between community groups and financial institutions. These discussions direct financial institutions towards community needs as they develop CRA plans and community benefits agreements. The short comment period compels community groups to file comments before plans and agreements are even drafted. We urge the FDIC and the other federal agencies to allow for longer comment periods.

We applaud the Federal Reserve Board and the Office of the Comptroller of the Currency for holding a March 2022 public meeting in regards to US Bank's application to acquire MUFG Union Bank and allowing community groups and other stakeholders the opportunity to weigh in on the merger. The upcoming public meeting in regards to BMO Harris' acquisition of Bank of the West in July 2022 is another example of meaningful public engagement that we hope to see continue with subsequent merger applications. Public hearings allow more voices to be heard and require financial institutions to publicly engage with community groups and more meaningfully address their concerns. We recommend that the federal agencies use a financial institution's disregard of public comments as grounds for rejecting a merger application or as another condition for approval. We also recommend that bank hearings are made more accessible for community groups to participate by holding them over multiple days and providing specific times to join for participants.

Conclusion

We thank the FDIC for facilitating this discussion and for providing communities the opportunity to comment on the effect of bank mergers. The increasing trend of consolidation in banking will have the greatest negative impact on low-income communities and communities of color by reducing bank branches, eliminating jobs, and significantly reducing CRA investments. We believe that the FDIC and the other federal regulatory agencies should take steps to create a more rigorous review of merger applications and require banks to demonstrate a public benefit as a condition of approval.

If you have any questions about this comment, or would like to discuss the matter further, please contact Debra Gore-Mann, President and CEO at The Greenlining Institute at debra.goremann@greenlining.org. Thank you for your consideration of our views.

Sincerely,

[redacted]

Debra Gore-Mann
President and CEO, The Greenlining Institute