United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

April 6, 2022

The Honorable Jerome Powell
Chair Pro Tempore
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Mr. Michael Hsu
Acting Comptroller
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Dear Chair Pro Tempore Powell and Acting Comptroller Hsu:

To protect consumers, small businesses and their communities, I urge the Fed and OCC to join the FDIC and review and reconsider their approach to big bank mergers. The federal banking agencies must all adopt a posture toward bank merger reviews that prioritizes competition, financial stability, and the needs of working families and small businesses.

Our markets have grown increasingly concentrated. In three-out-of-four industries, consolidation has grown since the 1990s, driving up prices for consumers and weakening worker bargaining power.[1] Concentration has undercut family farms which due to declining competition face a no-win scenario where they pay ever-rising prices for inputs, like seed and fertilizers,[2] but must accept take-it-or-leave-it prices when their livestock goes to market.[3]

To confront concentration, agencies across the federal government have pushed to tighten competition policy. The Justice Department and Federal Trade Commission have opened their

[1] Gustavo Grullon, Yelena Larkin & Roni Michaeli, Are U.S. Industries Becoming More Concentrated?, Swiss Finance Institute Research Paper No. 19-41 (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2612047.
[2] Keith Fuglie, Paul Heisey, John King & David Schimmelpfennig, Department of Agriculture, Rising Concentration in Agricultural Input Industries Influences New Farm Technologies (Dec. 3, 2012), https://www.ers.usda.gov/amber-waves/2012/december/rising-concentration-in-agricultural-input-industries-influences-new-technologies.
[3] Department of Agriculture, USDA to Begin Work to Strengthen Enforcement of the Packers and Stockyards Act (Jun. 11, 2021), https://www.usda.gov/media/press-releases/2021/06/11/usda-begin-work-strengthen-enforcement-packers-and-stockyards-act.

merger guidelines for revision.[4] The Department of Agriculture has pushed to fight consolidation and unfair trade practices in poultry, hog, and cattle markets.[5] And President Biden has spearheaded a whole-of-government initiative to promote competition through his executive order on competition last July.[6]

The banking system has witnessed the same steep and worrying drop in competition as other industries. Enabled by rubber-stamp merger oversight, the biggest banks have only grown bigger and consolidated their dominance—the last few years have made this trend obvious.[7] This consolidation has enriched big bank shareholders and executives, buoyed by record bank profits. But their gains have come at the expense of consumers and small businesses with less access to low-cost financial services. The data is clear about the serious, wide-ranging harms that bank mergers impose on communities.

At its core, consolidation hurts consumers. In the aftermath of a merger, the rates banks pay depositors go down, while the rates and fees banks charge borrowers go up.[8] Bank branches invariably close, making it harder for consumers to access financial services in their neighborhoods.[9] Troublingly, branch closures are usually clustered in low- and moderate-income communities.[10] That's why these closures often push consumers out of the banking system and, toward high-fee, predatory non-bank financial companies—like check cashers and payday lenders—that appear where branches used to be.[11] In fact, households in communities affected by bank mergers are more likely to see debts sent to collections agencies, or to become evicted.[12]

Consolidation also harms small businesses. Study after study has documented how, following bank mergers, small business lending dries up and available loans become more expensive. It's

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[4] Department of Justice & Federal Trade Commission, Request for Information on Merger Enforcement (Jan. 18, 2022), https://www.justice.gov/opa/press-release/file/1463566/download.
[5] Department of Agriculture, USDA to Begin Work to Strengthen Enforcement of the Packers and Stockyards Act (Jun. 11, 2021), https://www.usda.gov/media/press-releases/2021/06/11/usda-begin-work-strengthen-enforcement-packers-and-stockyards-act.
[6] Executive Order on Promoting Competition in the American Economy (Jul. 9, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.
[7] For instance, in March 2022, the Fed approved M&T's merger with People's United, which will create a $216 billion institution. The Fed and OCC also recently approved Huntington's acquisition of TCF as well as PNC's acquisition of BBVA's U.S. business, with both deals leaving banks with hundreds of billions of dollars of assets. And the FDIC approved the SunTrust-BB&T merger, creating a $451 billion bank.
[8] Jeremy C. Kress, Modernizing Bank Merger Review, 37 Yale J. on Reg. 435, 459 (2020), https://openyls.law.yale.edu/bitstream/handle/20.500.13051/8305/Kress_Article._Publication__1_.pdf?sequence=2&isAllowed=y.
[9] Lydia DePillis, The Internet Didn't Kill Bank Branches. Bank Mergers Did, Washington Post (Jul. 9, 2013), https://www.washingtonpost.com/news/wonk/wp/2013/07/09/the-internet-didnt-kill-bank-branches-bank-mergers-did/.
[10] Kress, Modernizing Bank Merger Review at 459.
[11] Vitaly M. Bord, Bank Consolidation and Financial Inclusion: The Adverse Effects of Bank Mergers on Depositors (Dec. 1, 2018), https://scholar.harvard.edu/files/vbord/files/vbord_-_bank_consolidation_and_financial_inclusion_full.pdf.
[12] *Id*.

little wonder that small business formation subsequently suffers.[13] Consolidation among banks also supports consolidation in non-financial industries, undermining small enterprises.[14] Meanwhile, community banks that serve rural and smaller communities and support more small business lending than Wall Street banks are forced to compete on an uneven playing field with nonbank fintech companies.

Finally, mega mergers jeopardize financial stability by creating new "too big to fail" institutions. A wealth of data and evidence supports the commonsense point that larger banks pose greater systemic risks.[15] The Federal Reserve found that the failure of a single large bank has a greater negative impact on the economy than the failures of multiple banks that are together the size of the large bank.[16]

We need a more energetic, more vigilant framework for bank merger review—one that reflects today's banking landscape and understands how market concentration undermines competition. This framework would enable regulators to carefully scrutinize a merger's impact on our economy and the communities served. Under the Bank Merger Act, Congress requires regulators to consider whether a transaction could leave consumers and small businesses outside the banking system—without a convenient bank branch or accessible financial services.[17] But too often, the banking agencies have brushed this requirement aside, allowing for an unchecked run of megabank deals. Regulators last denied a bank merger application in 2003.[18] It is time for regulators to transform their approach to better protect the consumers and small businesses that bank mergers leave behind.

I applaud the efforts of the FDIC Board to seek comment on the effectiveness of its bank merger framework.[19] I am also encouraged by the Justice Department's recent request for public comment on how it might revise its Bank Merger Competitive Review Guidelines.[20]

The Fed and OCC must follow their lead. I urge you to initiate a public comment process on bank merger review, like the FDIC's, and to work with DOJ to ensure that we have a fair and competitive financial system. In light for the growing concern of how concentration hinders free markets, a public comment process would allow Americans to share how mergers have affected

[13] Kress, Modernizing Bank Merger Review at 460 n.17.
[14] Nicola Cetorelli, Does Bank Concentration Lead to Concentration in Industrial Sectors?, Federal Reserve Bank of Chicago Working Paper 2001-01 (2001), https://www.chicagofed.org/publications/working-papers/2001/2001-01.
[15] *See* Simone Varotto & Lei Zhao, Systemic Risk and Bank Size, 82 J. International Money and Fin. 45 (2018).
[16] Amy G. Lorenc & Jeffery Y. Zhang, The Differential Impact of Bank Size on Systemic Risk 18, Board of Governors of the Federal Reserve System Finance and Economics Discussion Series 2018-066 (2018), https://www.federalreserve.gov/econres/feds/files/2018066pap.pdf.
[17] *See* 12 U.S.C. § 1828(c)(5); 12 U.S.C. § 1842(c) (requiring regulators to consider how transaction would affect "the convenience and needs of the community to be served").
[18] Kress, Modernizing Bank Merger Review at 439 n.17 (2020).
[19] Federal Deposit Insurance Corporation, Request for Information on Bank Merger Act, FIL-11-2022 (Mar. 25, 2022), https://www.fdic.gov/news/financial-institution-letters/2022/fil22011.html.
[20] Department of Justice, Antitrust Division Seeks Additional Public Comments on Bank Merger Competitive Analysis (Dec. 17, 2021), https://www.justice.gov/opa/pr/antitrust-division-seeks-additional-public-comments-bank-merger-competitive-analysis.

their communities and allow the agencies to reconsider their approval frameworks to better focus on small businesses, consumers and families, as Congress intended.

I am hopeful that your agencies can join in on a new approach to bank merger review that supports economic prosperity for all communities.

Sincerely,

Sherrod Brown

cc: Hon. Martin Gruenberg, Acting Chair, Federal Deposit Insurance Corporation