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
Washington, D.C. 20219

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).
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

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\(^5\) Governor Lael Brainard, *Statement on PNC/BBVA Application by Governor Lael Brainard*, (May 14, 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).
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.\textsuperscript{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.\textsuperscript{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
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


\textsuperscript{18} House Financial Services Committee Majority Staff Report, \textit{The Real Wells Fargo: Board and Management Failures, Consumer Abuses, and Ineffective Regulatory Oversight}, (Mar. 2020).