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

June 14, 2024

The Honorable Martin J. Gruenberg
Chair
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Dear Chair Gruenberg:

In March, the Federal Deposit Insurance Corporation (FDIC) announced proposed revisions to its Statement of Policy on Bank Merger Transactions (Policy Statement).[1] This proposed rulemaking follows the FDIC's 2022 request for information on its bank merger review framework[2] and seeks to update, strengthen, and clarify the FDIC's approach to evaluating bank merger transactions, which was last refreshed in 2008.[3]

Last year's bank failures coupled with an increasing trend towards concentration in the banking industry demonstrate the immediate need for the FDIC, the other banking regulators,[4] and the Department of Justice (DOJ),[5] to collectively complete a comprehensive update of the bank merger review framework to ensure consumers, and not just Wall Street, benefit from these transactions. Below are observations about the strengths of the FDIC's Policy Statement and opportunities for refinement. I urge the FDIC to quickly adopt a strong Policy Statement to ensure that proposed bank merger transactions receive adequate scrutiny.

[1] "Request for Comment on Proposed Statement of Policy on Bank Merger Transactions," Federal Register 89: 29222, Apr. 19, 2024, https://www.federalregister.gov/documents/2024/04/19/2024-08020/request-for-comment-on-proposed-statement-of-policy-on-bank-merger-transactions.
[2] "Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions," Federal Register 87: 18740, Mar. 31, 2022, https://www.federalregister.gov/documents/2022/03/31/2022-06720/request-for-information-and-comment-on-rules-regulations-guidance-and-statements-of-policy-regarding.
[3] "Statement of Policy on Bank Merger Transactions," Federal Register 73: 8870, Feb. 15, 2008, https://www.federalregister.gov/documents/2008/02/15/E8-2885/statement-of-policy-on-bank-merger-transactions.
[4] "Business Combinations Under the Bank Merger Act," Federal Register 89: 10010, Feb. 13, 2024, https://www.federalregister.gov/documents/2024/02/13/2024-02663/business-combinations-under-the-bank-merger-act.
[5] *See* Assistant Attorney General Jonathan Kanter Delivers Keynote Address at the Brookings Institution's Center on Regulation and Markets Event "Promoting Competition in Banking," Jun. 20, 2023, https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-keynote-address-brookings-institution.

I. Scrutiny of Proposed Transactions' Community and Economic Impact

Bank executives propose mergers when they're good for business. It's the job of agencies like yours to make sure that they're also good for consumers and communities. For too long, the impact of proposed mergers on people's livelihoods has been an afterthought in the merger review process. The Policy Statement would reverse that trend by establishing an expectation that proposed mergers "will enable the resulting [institution] to *better* meet the convenience and the needs of the community to be served than would occur absent the merger."[6] Specifically, the Policy Statement expects applicants to demonstrate examples of concrete benefits, such as lower prices and fees or new products and services, and to offer "forward-looking" details to help the FDIC assess the projected impacts on communities.[7]

This is a very welcome change. In 2019, the FDIC also approved the merger between BB&T and SunTrust to form Truist, currently the eighth largest bank in the country. The FDIC's approval order noted few details about BB&T and SunTrust's medium- and long-term plans for branch closures.[8] Five years later, Truist has closed nearly 1,000 branches, on net—approximately one third of the number it started with.[9] Truist's employees have been hit hard, too: from the end of 2019 through 2023, the bank's workforce declined by 14 percent.[10] Truist's executive and its Wall Street investors have continued pushing for these cost cutting measures in an attempt to fulfill promises from the bank's merger that have yet to materialize.[11] The Truist transaction illustrates that the negative impacts of merger transactions on employees and communities materialize over long time horizons.

I expect to see future merger approvals accompanied by firm, long-lasting commitments to improve products and services for banks' entire communities, and I expect to see transparent explanations from the FDIC as to why it believes communities will meaningfully benefit from those specific improvements. Where necessary, I would also encourage the FDIC to impose conditions on merger approvals that hold banks accountable to the promises they make.

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[6] Policy Statement at 29231 (emphasis in original).

[7] *Id.* at 29242.

[8] *See* Branch Banking and Trust Company Application for Consent to Merge with SunTrust Bank and to Establish Associated Branches, https://www.fdic.gov/news/press-releases/2019/pr19111a.pdf.

[9] *Compare* Truist Bank branch closures, at https://banks.data.fdic.gov/bankfind-suite/oscr/branch_office_closings?certSearch=9846&endDate=5%2F31%2F2024&eventCode=721&nameCertExpand=true&pageNumber=1&resultLimit=25&searchDateRadio=EFFDATE&sortField=INSTNAME&sortOrder=ASC&startDate=12%2F7%2F2019, with Truist Bank branch openings, at https://banks.data.fdic.gov/bankfind-suite/oscr/branch_office_openings?certSearch=9846&endDate=5%2F31%2F2024&eventCode=711&nameCertExpand=true&pageNumber=1&resultLimit=25&searchDateRadio=EFFDATE&searchPanelExpand=true&sortField=INSTNAME&sortOrder=ASC&startDate=12%2F7%2F2019, from Dec. 7, 2019 to May 31, 2024. For the number of branches Truist started with, *see id.*

[10] *Compare* Truist Financial Corporation 2019 Form 10-K, at 17, https://www.sec.gov/ix?doc=/Archives/edgar/data/0000092230/000009223020000045/tfc-20191231.htm, with Truist Financial Corporation 2023 Form 10-K, at 16, Table 3, https://www.sec.gov/ix?doc=/Archives/edgar/data/0000092230/000009223024000010/tfc-20231231.htm.

[11] Manya Saine, "US bank Truist plans 'sizable' job cuts to save $300 million in costs," *Reuters*, Sept. 11, 2023, https://www.reuters.com/business/finance/truist-financial-plans-sizable-reductions-workforce-cut-costs-2023-09-11/; Allisa Kline, "Truist vows to cut costs by $750 million. Critics wonder: Is it enough?," *American Banker*, Sept. 11, 2023, https://www.americanbanker.com/news/truist-vows-to-cut-costs-by-750-million-critics-wonder-is-it-enough.

Hopefully, greater attention to mergers' effects on people's livelihoods will result in transactions that deliver real and sustained value to consumers and not just banks' bottom lines.

II. Transaction Review for GSIBs and Other Large Banks

The Policy Statement also provides welcome guidance on how the FDIC will factor bank size into its merger review process. Transactions that would result in an institution with more than $100 billion in total assets would be subject to additional scrutiny.[12] We saw last year that failures of banks of this size can threaten not just their own customers, but the stability of the financial system. The FDIC's review process must guard against bank mergers that could harm the workers and small businesses that depend on a stable economy.

III. Resolvability

I strongly support the FDIC's proposal to consider resolvability as a part of its financial stability analysis. The Policy Statement explains that the FDIC, consistent with the other banking regulators, will now consider a newly merged bank's resolvability—*i.e.*, the ease with which a failing bank can be broken down and absorbed into the financial system. The Policy Statement identifies the resolution concern with large transactions, stating, "the size of an [institution] may limit the resolution options available to the FDIC in the event of failure."[13]

We saw during the Great Financial Crisis and last spring that when a large bank fails and can't be resolved straightforwardly, the only option to avoid financial instability might be to sell it to an even larger bank. This path only further concentrates our banking sector and lets the Too Big to Fail banks get bigger, and it gets more likely the larger a merger is.

It is vitally important that the banking regulators assess and consider the resolvability of the resulting institution when reviewing a proposed merger transaction. As banking regulators assess proposed transactions, particularly those involving the largest banks in the country, it is not appropriate to operate under the assumption that a peer institution can be expected to successfully integrate a failed or failing bank. If banks want to gain scale through acquisition, it is imperative that they are also resolvable in the ordinary course.

IV. Competitive Analysis

I would also like to call attention to the FDIC's stated intention to incorporate "all relevant market participants" in its competitive analysis.[14] According to the Policy Statement's preamble, the FDIC has proposed this approach in response to some commenters' suggestion that the competitive analysis include the presence of other, nonbank financial institutions that may compete with banks, such as fintech firms and credit unions.[15]

While the FDIC's intention to include all "relevant market participants" in the competitive effects analysis is appropriate, it also incentivizes merger applicants to identify as many potential competitors as possible to increase their chances of approval, since having more participants in a market will always make it look more competitive. Knowing this, applicants will likely seek to

[12] Policy Statement at 29243.
[13] *Id.* at 29223.
[14] *Id*. at 29240.
[15] *Id*. at 29228.

characterize every entity that offers any sort of financial product that is even remotely similar to the merging entities' suite of products as a "relevant market participant."

To address these concerns, I encourage the FDIC to conduct its own analysis to identify the "relevant market participants" and not solely rely on a merger applicant's representations about market participants. The FDIC has the expertise and resources to identify and determine the relevant market participants in any geography, product, or product segment. Second, I encourage the FDIC to be judicious in the weight it assigns to this factor when considering the totality of the merger application.

V. Public Input

The Policy Statement notes that the FDIC will generally consider it in the public interest to hold a hearing for merger applications resulting in an institution with greater than $50 billion in assets or for which a "significant number of Community Reinvestment Act protests are received."[16] Merger applications are often accompanied by a robust dialogue between the acquiring institution and banking regulators, which lets bankers pitch the merits of the proposed deal or allay any regulatory concerns. The public, however, lacks similar opportunities to have a one-on-one dialogue to express concerns about a proposed transaction. For this reason, I am supportive of the FDIC's movement toward a standard that would give citizens more opportunities to voice their concerns directly to regulators. However, I encourage the FDIC to revisit the conditions for holding a public hearing to capture a larger number of proposed transactions and provide additional guidance and clarity to the public regarding what constitutes a "significant number of Community Reinvestment Act protests."

First, between 2004 and 2023, 95 percent of the 2,054 FDIC-approved mergers resulted in institutions with less than $10 billion in assets.[17] Setting the asset threshold at $50 billion will unnecessarily exclude transactions that can still have significant impacts on communities. In the interest of ensuring that the public has increased opportunity to voice their concerns about proposed transactions to regulators directly, I encourage the FDIC to reconsider the asset threshold that triggers a public hearing. Second, the standard outlined in the Policy Statement does not define what constitutes a "significant number of Community Reinvestment Act protests" for the purposes of determining whether a public hearing is appropriate.[18] The absence of an objective or quantitative standard on this point fails to provide transparency about what level of public concern about a proposed transaction the FDIC believes warrants a public hearing. Increased clarity on this point will serve to reassure the public that their expressions of concern about a proposed transaction will not be overlooked. Third, the specific label of a "CRA protest" may be overly restrictive and could exclude valid complaints that might not have a clear link to the Community Reinvestment Act.

For these reasons, I encourage the FDIC to recalibrate this aspect of the proposal to provide for more public discussion of the merits of proposed transactions and increased clarity about when and how public complaints will trigger a public hearing.

[16] *Id*. at 29242.
[17] *Id*. at 29236.
[18] *Id*. at 29242.

VI. Closing

As the FDIC noted in its 2022 request for information, today's banking system is significantly more concentrated than the one we had a few decades ago.[19] If the merger review process fails to take stock of the sector's persistent trend towards concentration, this pattern will only continue, largely to the detriment of the people and places who will see reduced choice for banking products and services or lose access altogether. In closing, the FDIC should prioritize finalizing a strong Policy Statement to ensure that a clear set of principles are guiding the review and assessment of mergers and acquisitions. Further, the FDIC should continue coordination with the other banking regulators to ensure that the agencies' respective analytical merger review frameworks are comprehensive and consistent.

Sincerely,

[redacted]

Sherrod Brown
Chairman
Senate Committee on Banking,
Housing, and Urban Affairs

cc: Acting Comptroller Michael J. Hsu, Office of the Comptroller of the Currency

[19] *Supra* note 2 at 18740.