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To: [ATR-BankMergers \(ATR\)](#)
Subject: Antitrust Division Banking Guidelines Review
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I want to see current anti-trust review strengthened. Additionally, when banks merge the law that requires a public benefit as a result of the merger, should be more than just occasionally upheld by the regulatory agencies.

The point is to increase access to credit and capital in traditionally underserved communities and strive to ensure that mergers do not result in decreases in lending and bank service in their communities but instead provide public benefits in terms of improved Community Reinvestment Act (CRA) and fair lending performance. Any changes should strengthen the anti-competitive review of merging institutions and increasing public benefits commitments when certain thresholds are reached. It should also include non-banks as part of anti-trust analysis, which, given the rapid unbundling of products, may involve separate analysis for deposits, payments, mortgages, small business loans, consumer lending and perhaps other products.

Community Benefit Agreements (CBAs) commit banks to a specified level of loans, investments and services in the future, which are at a higher level than the previous performance of the merging banks. Robust merger review processes that consider the banks' future abilities to meet community needs in a non-discriminatory manner best facilitate CBAs, which are a concrete demonstration of public benefit. I believe that the current emphasis in DOJ's merger review guidelines on anti-trust analysis is vital for preserving robust bank competition and affordable bank rates and fees among in all communities. At the same time, however, the almost sole emphasis on anti-trust considerations in the existing DOJ merger review analysis is insufficient in attaining the objectives of public benefits required by banking law.

The Federal Deposit Insurance Act and the Bank Merger Act requires federal agencies to consider the convenience and needs of the communities to be served as a paramount criterion of merger review in addition to anti-trust and safety and soundness considerations. The principle of "convenience and needs" refers to whether banks after mergers will be responding to needs of communities for loans, investments and services. It is not enough for banks to be under the spur of competition and offering reasonable rates if they have significantly reduced branches and loans after their mergers. Banking law recognizes that this would not be an acceptable outcome and requires the agencies to ensure that convenience and needs will continue to be served after bank mergers.

Because of the above, I agree with the following National Community Reinvestment Coalition (NCRC) recommendations:

- The Herfindahl-Hirschman Index (HHI) screen of 200/1,800 should not only include heightened anti-trust reviews but also conditional merger approvals requiring concrete public benefits in the specific geographical areas (metro areas or rural counties) where the HHI exceeds this threshold. Currently, the DOJ and the bank agencies give these mergers heightened reviews, occasionally order branch divestitures and rarely institute public benefits remedies.
- The informal HHI screen of 100 must be formalized to a presumption that DOJ and banking agencies will require public benefits in impacted areas, particularly in underserved counties.
- When a merger results in an institution of a certain asset size of either \$10 billion or \$50 billion, a public benefit plan for the banks' entire geographical footprint must be a part of the merger application subject to public comment. NCRC's preferred threshold would be \$10 billion since these are large banks and only about 139 banks in the United States are \$10 billion or more in assets. However, if the agencies wanted to focus on the very largest banks for this requirement, the threshold of \$50 billion could be used.

NCRC recommends that the agencies consider designating counties as underserved. This would be defined as counties with low levels of retail lending per capita. These counties will receive elevated attention in HHI and public benefits analyses.

- HHI analysis must not only consider deposits but also separately consider home and small business lending. In addition, the agencies should consider consumer lending and payments but new data reporting requirements would be needed for HHI analysis of these products.
- Public benefit requirements could include CBAs and specific improvements in CRA and fair lending performance measures. Needs to be addressed include those in communities of color, environmental remediation and recovery from COVID.
- HHI analysis must include non-traditional banks and non-banks, many of which are large institutions. Their omission makes markets appear to be less concentrated than they actually are.

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JOVIS: Addressing barriers to community living

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