

**From:** [Robert Rutowski](#)  
**To:** [ATR-BankMergers \(ATR\)](#); [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Antitrust Division Banking Guidelines Review  
**Date:** Friday, October 16, 2020 5:38:00 PM

---

16 October 2020

Mr. Makan Delrahim  
Assistant Attorney General, Antitrust Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001  
[REDACTED]

RE: Antitrust Division Banking Guidelines Review

Dear Assistant Attorney General Delrahim:

Americans for Financial Reform Education Fund has submitted comments on the U.S. Department of Justice's consideration of whether to revise the 1995 Bank Merger Competitive Review for the consideration of proposed bank mergers. Civil rights, consumer, labor, business, investor, faith-based, and civic and community groups are deeply concerned about the negative impacts of the highly-consolidated financial system, including large depository banking institutions, on the economy, communities, consumers, and businesses. These damaging impacts historically have disproportionately disadvantaged people of color, women, people with limited English proficiency as individuals as well as the communities where these people live.

The current merger review process by both the Department of Justice and banking regulators has failed to protect the public and public interest from ever larger banks exercising market power to impose higher costs on consumers, reduce the volume or quality of banking services, or prevent the biggest banks from becoming so large that they pose a risk to the entire financial system and real economy. Unfettered bank mergers contributed to the rise in megabanks and systemic fragility that led to the 2008 financial crisis, which imposed widespread and long-lasting economic costs on everyone but especially lower-income people and people of color.

The Department of Justice must not weaken or loosen its evaluation of proposed banking mergers in any way. The review of proposed bank mergers must instead become more rigorous and skeptical given the unique role banks play in the economy and household finances and the explicit government subsidies banks receive and implicit too-big-to-fail backstopping the government often provides to the biggest banks if they become distressed.

The Department of Justice should pursue a retrospective analysis of the impact of prior banking mergers on consumers and communities, the costs and prices of banking products, the availability and quality of credit for households and small

businesses, and the extent to which the merged banks actually served the convenience and needs of the communities where they do business. The Justice Department should also investigate whether the biggest banks created by a series of mergers constitute illegal monopolies, oligopolies, or cartels that should be broken up to protect the public interest, consumers, communities, and the economy.

The Bank Holding Company Act requires antitrust authorities at banking agencies and the Department of Justice to reject proposed bank mergers that are anticompetitive (that would create a monopoly or where the effect may substantially lessen competition), that harm the convenience and needs of the community, that pose risk to the banking or financial system, or that have insufficient managerial capacity. The “convenience and needs of the community” includes banks’ performance under the Community Reinvestment Act in providing both depository and credit services to lower-income customers and people of color and lower-income areas and communities of color where a bank operates.

The Department of Justice must consider the implications on market concentration and competition much more robustly, with greater attention to the potential negative impact on people of color, women, people with language access difficulties, and lower-income people as well as communities of color and lower-income areas. Additionally, the Department should evaluate, in coordination with federal and state banking regulators and state Attorneys General, the potential negative impact proposed mergers could have on systemic risk, including wholesale investment banking, managerial competence, and compliance with consumer protection and other banking laws.

The Department of Justice should be especially skeptical of proposed mergers involving banks subject to enforcement actions or with large numbers of consumer complaints at the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB); banks that have a record of harming, disadvantaging, or defrauding consumers or violating fair lending, fair housing, and fair credit laws should not be rewarded with merger approvals. The Department should coordinate with the FTC and the CFPB to review the consumer protection and fair lending record of proposed merging banks, the cost structure and availability of account and loan products, the performance serving lower-income applicants and applicants of color in providing mortgage, small business, and other loan products.

Yours sincerely,  
Robert E. Rutkowski

cc:  
Legislative Correspondence Team  
Longworth House Office Building  
Washington DC 20515

[REDACTED]

[REDACTED]

