February 15, 2022

United States Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Public Comments on Bank Merger Competitive Analysis
Submitted by email to: ATR.BankMergers@usdoj.gov

To Whom It May Concern:

The Committee for Better Banks writes in response to the Department of Justice Antitrust Division's request for comment regarding revision of the 1995 Banking Guidelines and competitive analysis of mergers. The Committee for Better Banks, the only independent voice for frontline bank employees, is a coalition of financial sector workers and labor organizations, including the Communications Workers of America, uniting to improve working conditions and to raise standards in the financial services industry. Through its bank accountability project, the Committee for Better Banks analyzes how working conditions impact the public interest, consumer protection, and the safety and soundness of financial institutions.[1]

We support expanding scrutiny of bank mergers to include analysis of a broader set of public interest impacts including bank workers' rights, racial and gender employment bias, and the impact of future branch opening and closings on access to jobs and capital. The Department of Justice (DOJ) and bank regulators should seek to enjoin mergers that would cause harm to workers and, where structural remedies are pursued, incorporate specific remedies to address the risks associated with an absence of workers' rights protections. To support this expanded review, we recommend that bank agencies collect information related to employment to better analyze the competitive effects of bank mergers and direct, indirect, and induced economic consequences of consolidation.

I. Public Interest

The Committee for Better Banks supports enhanced scrutiny of bank mergers related to their purported and likely public interest outcomes. The DOJ should require more convincing evidence that a proposed merger will benefit the public and start merger analysis from the

[1] For more information on the Committee for Better Banks, visit: www.betterbanks.org and www.bankaccountability.org

presumption that a proposed merger is *not* in the public interest.[2] Wells Fargo is a case in point. Following a series of mergers and acquisitions, the bank has been subject to at least ten Consent Orders, including a cap on its total assets, issued by the Office of the Comptroller, the Federal Reserve Board of Governors, the Federal Deposit Insurance Corporation, and the Consumer Financial Protection Bureau that have resulted in billions in fines. These actions have led to calls by some elected officials that "Wells Fargo is too big to manage.[3]" An examination of the Wells Fargo case illustrates how workers' ability to exercise their rights is an important component of the public interest.

A. Financial Institutions Workers' Rights Are In Consumers' Best Interest

While the conditions of workers at financial institutions directly impact consumers, this connection unfortunately has been too often overlooked.[4] Moreover, there is considerable evidence that bank consolidation threatens consumer well being by impairing the rights of bank and credit union workers.[5] Bank consolidation generally results in job loss through branch closings, especially in underserved communities, and customer servicing departments acquiring increased caseloads, performance metrics and sales goals.

The "fraudulent accounts" and many other customer abuse scandals at Wells Fargo, which cost the bank and its stakeholders billions of dollars, provide vivid examples of this nexus.[6] Wells Fargo's previous acquisitions and rapid growth have been identified as a contributing factor to the scandals.[7] The Norwest merger introduced cross-selling to Wells Fargo, and the Wachovia acquisition pushed the practice to an all-time high.[8] Not only did Wells Fargo executives establish a business model that relied on pressuring frontline workers to achieve unattainable sales goals or risk public humiliation in front of their coworkers and getting fired, but when the scandal came to light, executives initially tried to scapegoat and blame workers as the primary source of the abuses, stating the bank had fired over 5,300 workers.[9] It took regulators several years of investigations before executives were finally held to account.[10]

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[2] Jeremy C. Kress, "Modernizing Bank Merger Review," Yale Journal on Regulation, 2020.
[3] Statement by U.S. Representative Maxine Waters, Chair of the Financial Services Committee, March 12, 2019. *available at: https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=402448*
[4] Stephen Lerner, Rita Berlofa, Molly Mcgrath, And Corey Klemmer, Friedrich Ebert Stiftung, Tipping the Balance: Collective Action by Finance Workers Creates 'Regulating from Below,' September, 2018.
[5] House Committee on Financial Services, Testimony of Desiree Jackson, The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System, 117th Cong., September 29, 2021.
[6] Emily Flitter, "The Price of Wells Fargo's Fake Account Scandal grows by $3 billion", The New York Times, February 21, 2020, *available at: https://www.nytimes.com/2020/02/21/business/wells-fargo-settlement.html*
[7] House Financial Services Committee Majority Staff Report, The Real Wells Fargo: Board and Management Failures, Consumer Abuses, and Ineffective Regulatory Oversight, (Mar. 2020)
[8] Public Citizen, The 'King of Cross-Sell' and the Race To Eight: An analysis of Wells Fargo's cross-sell numbers since 1998, September 29, 2016.
[9] Matt Eagan, "5,300 Wells Fargo employees fired over 2 million phony accounts", CNN Business, September 9, 2016, *available at: https://money.cnn.com/2016/09/08/investing/wells-fargo-created-phony-accounts-bank-fees/index.html*
[10] Office of the Comptroller of the Currency, Issues Notice of Charges Against Five Former Senior Wells Fargo Bank Executives, Announces Settlement With Others, January 23, 2020.

B. Racial Bias In Employment Harms Consumers

Bank consolidation contributes to persistent racial bias in employment practices.[11] The lack of diversity in hiring, training and advancement opportunities for minority employees at all levels has negative impacts on customers, especially in underserved communities.[12] Specifically, minority customers face discrimination, including being refused service to access their own banking accounts.[13] Insensitive comments made by Wells Fargo CEO Charles Scharf regarding the source of the problem being "a very limited pool of Black talent to recruit from"[14] reveals just how deep racial bias runs within large financial institutions.

C. New Branch Locations And Their Impact On Access To Capital And Jobs

The location of bank branches is a key factor in the accessibility of entry level jobs in the financial industry. Unfortunately, bank consolidation generally results in branch closures, which disproportionately harms low-income and minority communities in a myriad of ways, going beyond individual access to financial services.[15] For example, the reduction in economic opportunity due to bank branch closures can lead to increased income inequality through higher unemployment rates and lower median income.[16] Further exacerbating this trend, there is new evidence that consolidation also impacts banks' decisions about where to locate new branches.[17]

Not only do the lack of bank branches in low-income areas and communities of color make jobs less accessible, the lack of branches leads to higher cost and lower-quality financial services.[18] Branch closures are associated with a 3-year decline in small business economic activity, which leads to the inference that access to a branch positively promotes economic activity. Economic research on branch access finds that branches are key to credit rationing because they enable banks to collect soft information for loan decisions. This can mean the difference between whether a small business loan is approved or denied and if the terms of the loan are tenable for a minority entrepreneur. According to researchers affiliated with the Federal Reserve Board of Chicago, "The presence of a bank has significance that goes beyond sheer convenience to residents. The proximity of a bank to a neighborhood plays a role in the ability of the financial institution to collect soft information useful for lending, which can contribute to more favorable terms of credit. Closer distance facilitates more frequent interactions and relationship banking,

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[11] Committee for Better Banks, Advancing Racial Justice for Frontline Bank Workers, April, 2021

[12] Adisa Harget-Robinson, "The push to diversify from within the industry", ABC News, April 3, 2021, *available at: https://abcnews.go.com/Business/push-diversify-banking-industry/story?id=76568426*

[13] Emily Flitter, "This is what racism sounds like in the banking industry", The New York Times, December 11, 2019, Updated July 13, 2021, *available at: https://www.nytimes.com/2019/12/11/business/jpmorgan-banking-racism.html*

[14] Chris Isidore and Matt Eagan, "Wells Fargo CEO apologies for saying the Black talent pool is limited", CNN Business (September 23, 2020), *available at: https://www.cnn.com/2020/09/23/business/wells-fargo-ceo-bias/index.html*

[15] Zach FoxZain TariqLiz ThomasCiaralou Palicpic, "Bank branch closures take greatest toll on majority-black areas," S&P Global Market Intelligence, July 25, 2019 and Jacob Faber and Terri Friedline, "The Racialized Costs of Banking," New America, June 2018.

[16] Mark Garmaise and Tobias Moskowitz, "Bank Mergers and Crime: The Real and Social Effects of Credit Market Competition," University of California Los Angeles, 2006.

[17] Committee for Better Banks, "Truist Merger: New Branch Investment Cut Out Low-Income, Diverse Areas," September, 2021.

[18] Jacob Faber and Terri Friedline, "The Racialized Costs of Banking," New America, June 2018.

which help mitigate the problems of information asymmetry and credit rationing."[19] The researchers reasoned that banks with branches in these areas can use relationship banking to develop insights into borrower quality through deposits and repeated interactions in branches. This information is layered with credit-scores to create a more complete picture of the borrower than relying just on credit scores or relationships alone.

Researchers with the Federal Reserve Board of Cleveland found that "mortgage originations increase, and interest rate spreads decline when there is a bank branch located in a low-to-moderate income neighborhood." The reason is the same as for other types of lending: credit scores have less utility in low-income areas because they represent incomplete and potentially biased information. Providing credit in areas where credit scores do not provide meaningful information makes branches more important because they provide the bank with relational information about individuals and communities relevant to their ability to repay loans. This includes analyzing rent and utility payments to supplement traditional credit information, and partnering with community groups to provide financial education and counseling and identify qualified borrowers.[20] As the National Community Reinvestment Coalition puts it: "Disrupting the relationship between local bank branches and small businesses threatens to constrain access to the capital and financial services required for a successful economy."[21] The Pittsburgh Post-Gazette Editorial Board sums up the risks to communities, "When banks leave a community, credit can tighten. Livability erodes."[22]

Opening new branches allows customers to connect with credit provided by banks and can drive down the cost of credit when multiple branches compete for customers in the same geographic area. With the traditional branch costing roughly $2-4 million to set up and $200,000-400,000 per year to operate,[23] when banks open new branches, especially in underserved communities, they have additional direct economic development benefits including increasing the local multiplier effect. Branching has also been shown to increase bank system stability by diversifying their assets and widening their depositor base. Studies of branch failures and consolidation during the Great Depression found that branching increased competition, which increased financial stability by forcing weaker banks out of the banking system. Conversely, branch network optimization that concentrates branches around select borrowers to take

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[19] Maude Toussaint-Comeau, Yi David Wang, Robin Newberger, "Impact of Bank Closings on Credit Extension to Businesses in Low-Income and Minority Neighborhoods," Journal of Black Political Economy, 2020, Vol. 47 (1) 20-4.

[20] O. Emre Ergungor, "Bank Branch Presence and Access to Credit in Low-to-Moderate Income Neighborhoods," Federal Reserve Bank of Cleveland, January 24, 2007

[21] Bruce Mitchell, Jason Richardson, Zo Amani, "Relationships Matter: Small Business and Bank Branch Locations," National Community Reinvestment Coalition, accessed August 2, 2021

[22] Editorial Board, "Banking for all: Cities should press for branches in poor areas," The Pittsburgh Post-Gazette, March 25, 2019.

[23] Dan Freed, "U.S. banks want to cut branches, but customers keep coming," Reuters, August 22, 2016. *available at: https://www.reuters.com/article/us-usa-banks-branches/u-s-banks-want-to-cut-branches-but-customers-keep-coming-idUSKCN10X0D6*

advantage of economic scope through cross-selling and reduced costs impedes branching in underserved areas which further restricts access to credit in these areas.[24]

D. Case of Truist Merger Impact On New Branch Locations

The 2019 merger of BB&T and SunTrust into Truist Bank gives us a unique insight into the impact of mergers on the public interest in access to financial services. To overcome immediate concerns about the disparate impact of the merger in low-income and communities of color, during July 2019 testimony before the House Financial Services Committee the Chief Executive Officers of SunTrust and BB&T promised to open 15 new branches in low-moderate income areas once the merger was complete. SunTrust Chairman and CEO William Rogers said, “We also pledge to open at least 15 new branches in low to moderate income neighborhoods.” He added that “Our focus will not abandon communities. We've committed to keep branches in rural markets. We've committed to open branches in LMI markets because our—we’ll only be as strong as our communities.”[25]

An analysis of federal data shows that Truist opened 10 branches in low-moderate income census tracts between January 1, 2020 and December 31, 2021, six of which were in diverse census tracts.[26] During the same time it opened 15 in majority-white upper income areas and clearly favored placing new branches in middle-income white areas, which received 10 new Truist branches compared to only one new branch in middle-income diverse areas.[27]

Truist Bank Branch Openings (2020-2021)			
Income	**Low-Moderate Income**	**Middle-Income**	**Upper-Income**
Majority Minority	6	1	0
Majority White	4	10	15
Grand Total	**10**	**11**	**15**

In addition to failing to meet public promises related to the merger, the post-merger company has shifted its branch opening strategy to favor wealthier communities. Comparing pre-merger opening trends for both SunTrust and BB&T with post-merger branch opening data under Truist shows that the bank has shifted dramatically away from investing in opening new branches in low-income and minority communities while simultaneously increasing investment in wealthier white areas. Truist reduced branch openings in low-moderate income and minority neighborhoods by 35 percent after the merger of SunTrust and BB&T banks. Prior to the merger,

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[24] Mark Carlson, Kris Mitchener, “Branch Banking, Bank Competition, and Financial Stability,” Finance and Economics Discussion Series, Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board, Washington, D.C., 2005-20

[25] “House Financial Services Committee Holds Hearing on SunTrust and BB&T Bank Merger,” July 24, 2019, CQ Transcripts

[26] Data from FDIC Branch Find Suite using effective dates of January 1, 2020 and December 31, 2021.

[27] Committee for Better Banks, “Truist Merger: New Branch Investment Cut Out Low-Income, Diverse Areas,” September, 2021.

FDIC data shows that SunTrust and BB&T opened new branches in roughly the same numbers in low-income and minority areas as upper-income white areas.[28]

II. Analyzing and Acting on Labor Market Harms

While merger review has not historically examined the effect proposed mergers would have on labor markets, labor market concentration is at high levels across the economy, and the effects are severe and ubiquitous, leading to wage stagnation and depression.[29] In industries such as banking where corporate systems are integrated both horizontally and vertically, there are complex issues of concentration and control that affect access, quality, and cost for consumers as well as wages and other employment conditions for workers, as described below.

Given the negative impacts of corporate consolidation and employers' abuse of market power on workers' ability to exercise their rights and address racial and gender bias, the DOJ should rigorously examine labor market impacts of proposed mergers and seek to enjoin transactions that will cause harm to workers. Regulators increasingly recognize that in cases where mergers may worsen labor monopsony and constrain the elasticity of labor supply, transactions cannot be justified by their potential benefits to purchasers downstream with lower prices. Merger guidelines should be revised to require the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and DOJ to consider labor market impacts of proposed transactions.

The importance of collective bargaining for mitigating employer market power should be recognized and incorporated in the merger review process. Merger guidelines should be revised to require that existing collective bargaining agreements be preserved in the course of mergers and that mergers should be enjoined if they threaten to reduce competition in labor markets. Further, where merger efficiencies don't allow for a structural remedy and therefore a consent decree is imposed, the bank regulators and DOJ should look to collective bargaining as a tool to counterbalance the effects of labor market concentration, by considering provisions that advance worker free association among the conditions that the agencies may place on mergers to allow them to proceed where a proposed merger would increase employer market power and likely result in substantial harm to workers.

There are several additional provisions that may be appropriate for consent decrees to offset anti-competitive labor market power, including:

- Prohibition on non-compete clauses and similar restrictive contracts for workers (to the extent these contracts are not prohibited across the board under federal law);

[28] Ibid.
[29] See, for example, Ioana Elena Marinescu and Eric A.Posner, "Why Has Antitrust Law Failed Workers?" February 14, 2019, https://ssrn.com/abstract=3335174; Efraim Benmelech, Nittai Bergman and Hyunseob Kim, "Strong Employers and Weak Employees: How Does Employer Concentration Affect Wages?," Nat'l Bureau of Econ. Research, Working Paper No. 24307, 2018, https://www.nber.org/papers/w24307.pdf; José Azar, Ioana Marinescu, and Marshall Steinbaum, "Antitrust and Labor Market Power," Economics for Inclusive Prosperity Research Brief, May 2019, https://econfip.org/wp-content/uploads/2019/05/Antitrust-and-Labor-Market-Power.pdf.

- Provisions addressing informational asymmetries regarding wages, for example to eliminate non-disclosure agreements that prohibit employees sharing information about wages;
- Protections for employees to pursue employment claims on a joint, class, or collective basis in whatever forum.

In addition to consent decree provisions, the agencies should establish consultation opportunities for worker representatives to ensure that remedies do not harm workers and to oversee consent decree enforcement. If structural remedies are considered, worker representatives should be consulted as part of a Divestiture Review Task Force to evaluate the impact on the parties' workforce. The agencies could also expand the use of "monitoring trustees" to include worker representatives, an approach that has been used in other consent decrees, such as those related to police department oversight.[30] These approaches should be reflected in new merger guidelines for bank regulators and DOJ.

III. Conclusion

The Committee for Better Banks believes that greater scrutiny of bank mergers by analyzing a broader set of public interest impacts, including workers' rights, racial and gender bias, and future branch opening and closings, will lead to better working conditions for bank workers, improve compliance with consumer protections, increase access to jobs and capital, and protect against consolidations that shrink the real economy of local communities.

Sincerely,

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[30] These approaches have been suggested by Professor Hiba Hafiz in her recent article, "Rethinking Breakups," 71 DUKE L. J. (forthcoming 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3892326.