June 14, 2024

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218,
Suite 3E-218Washington, DC 20219.
Email: "Regulations.gov"

Debra Buie Decker
Executive Secretary
Attn Comments RIN3064-ZA31
Federal Deposit Insurance Corp
550 17th Street, N.W.
Washington, D.C. 20429
Email: Comments@fdic.gov

RE: *Rise Economy et al comments on:*

- *the OCC's proposed rule regarding Business Combinations under the Bank Merger Act [Docket ID OCC-2023-0017] RIN 1557-AF24*

- *the FDIC's Proposed Statement of Policy on Bank Merger Transactions: RIN 3064-ZA31*

Dear OCC and FDIC officials,

Rise Economy (formerly the California Reinvestment Coalition) and the undersigned community, civil rights and climate justice organizations are pleased to submit these comments in response to regulatory proposals to reform the bank merger process.

Rise Economy is a member-led alliance creating systemic change and economic justice for BIPOC and low-income communities. Rise Economy is building a powerful movement for economic justice, focused on knocking down the historical barriers that people and communities of color have faced in building generational wealth. Rise Economy has over three hundred (300) nonprofit organizational members throughout the state of California.

Rise Economy member and allied organizations have found the bank merger process to be a significant opportunity to insert community voices into considerations about whether and how bank mergers will affect key stakeholders in impacted neighborhoods. Since 2020 alone, Rise Economy members have negotiated over $100 Billion in Community Benefits Agreement (CBA) reinvestment commitments for California.[1]

At the same time, bank mergers can do irreparable harm to communities, and the current bank merger process is strongly biased in favor of merger approval with little consideration given to community impacts.

As a result, we have seen communities suffer from bank mergers in the form of lost jobs and reduced hours and working conditions for community development and front-line bank branch staff, closed branches, decreased reinvestment activity, reduced access to credit for small businesses, higher costs and fees for bank customers and consumers, exacerbation of climate change concerns, and greater climate-related financial risk to the financial system. None of these harms are sufficiently considered during the bank merger approval process currently.

As such, we were pleased to see President Biden's Executive Order on Promoting Competition in the American Economy, and its encouragement of the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) to update guidelines on bank mergers to provide more robust scrutiny of mergers.[2]

In developing our comments, we consider the question posed by Acting Comptroller Hsu in his remarks before the University of Michigan School of Business - "What should the U.S. banking system look like?"[3] We envision a banking system that aligns with the comments of FDIC board member Chopra, where "[c]onsultant-drafted puffery regarding how savings will trickle down to families and small businesses will not suffice,"[4] and where

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[1] https://rise-economy.org/publications/bank-agreements/
[2] https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/
[3] https://www.occ.gov/news-issuances/speeches/2024/pub-speech-2024-6.pdf
[4] https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-rohit-chopra-at-the-peterson-institute-for-international-economics-event-on-revitalizing-bank-merger-review/

bank merger "[a]pplicants will need to provide specific and forward-looking information as to how the community will be better off.[5]"

We also note that the FDIC and the OCC, along with the Board, recognized that "[t]he financial impacts that result from the economic effects of climate change and the transition to a lower carbon economy pose an emerging risk to the safety and soundness of financial institutions and the financial stability of the United States."[6] Therefore, references to "risks" throughout the proposals should be read as incorporating climate-related financial risks. Because the proposals provide no notice or basis for excluding climate-related financial risks from any portion of the bank merger review process, excluding such risks would be arbitrary and capricious. Given the emerging nature of climate-related financial risks, the FDIC and the OCC should clarify that they are included. Certain specific clarifications related to the statutory factors are included below.

We urge the regulators to reform the bank merger process in the following manner:

End expedited reviews/processing of bank merger applications and streamlined applications.[7]

Despite their substantial impacts on communities, bank merger applications are given too little consideration currently, and too little information is required of bank applicants and made available to the public. At a minimum, bank merger reform must recognize that all bank mergers are significant and end expedited reviews/processing and streamlined applications. This will

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[5] https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-rohit-chopra-at-the-peterson-institute-for-international-economics-event-on-revitalizing-bank-merger-review/

[6] "Principles for Climate-Related Financial Risk Management for Large Financial Institutions," 88 Fed. Reg. 74,183, 74,186 (Oct. 30, 2023).

[7] The OCC is proposing to remove a) the expedited review procedures in §5.33(i), and b) procedures allowing for a streamlined business combination application under certain circumstances as outlined in §5.33(j). See Business Combinations Under the Bank Merger Act, 89 Fed. Reg. 10,011 (Feb. 13, 2024). We strongly support these proposed changes, and further urge the FDIC to remove expedited processing provisions under 12 C.F.R. section 303.64.

help ensure for all mergers a full consideration of all community impacts and emerging risks, such as climate-related financial risks.

Prioritize the convenience and needs of communities so that no bank merger will be approved unless bank applicants demonstrate that communities will be *better* off after the merger.

We strongly support the FDIC's statement that the FDIC expects that a merger between IDIs (Insured Depository Institutions) will enable the resulting IDI to better meet the convenience and the needs of the community to be served than would occur absent the merger.[8] The FDIC clarifies that applicants "are expected to demonstrate how the transaction will benefit the public through higher lending limits, greater access to existing products and services, introduction of new or expanded products or services, reduced prices and fees, increased convenience in utilizing the credit and banking services and facilities of the resulting IDI, or other means."[9]

We urge that at a minimum, no merger should be approved unless bank applicants can demonstrate that the pro forma bank will reinvest *more* in communities; have *better* consumer protection, fair housing, and fair lending policies and practices; provide stronger mitigations against the advance of climate change, and show reduced climate-related financial risk than each bank had separately and independently.

It is positive that the FDIC the proposal outlines the FDIC board's expectations with regard to the public benefits of the transaction,[10] and affirms that the evaluation of statutory factors is forward-looking. Reliance only on CRA Performance Evaluation (PE) ratings is highly problematic for a number of reasons, including that the evaluations are not only backwards

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[8] Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29231 (April 19, 2024)

[9] Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29242 (April 19, 2024)

[10] Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29231 (April 19, 2024)

looking, but they are also often dated. Banks are examined only every few years, and there is often a significant lag between the evaluation and the public release of the PE. Importantly, PE ratings have been notoriously forgiving, with a strong majority of the last 19 banks entering into Department of Justice (DOJ) redlining consent orders having passed their CRA evaluations with "Satisfactory" or "Outstanding" ratings. In other words, at the same time that the DOJ was charging certain banks with redlining in communities of color, the banking regulators determined that these same banks were doing a fine or excellent job serving their communities under the nation's anti-redlining law.[11] This is outrageous.

While the FDIC proposal suggests a more rigorous analysis of the convenience and needs evaluation, we are nonetheless concerned that the proposal may allow the same, stale, boilerplate language regarding increased branch hours and larger lending limits to meet this standard. These boilerplate statements, which repeatedly appear in bank merger applications, may possibly address certain, narrow aspects of the *convenience* of communities (while ignoring all of the potential harms, such as the inevitable decrease in branches), but they clearly do not address the *needs* of the communities affected.

- Community Benefits Agreements (CBAs) that are negotiated with affected communities demonstrate a bank's good faith attempt to address the needs of the community, as articulated by the community, and should therefore be required, or at least encouraged. The OCC and FDIC proposals fail in not requiring public statements, public plans, or CBAs from bank applicants.[12] Requiring CBA commitments would serve the dual goals of transparency and meeting convenience and needs.[13] Bank applicant commitments and CBAs should always be made a condition of any merger approval, and bank regulators should always examine for compliance with commitments during future examinations.

[11] Rise Economy analysis based on NCRC research and analysis.
[12] Questions 20, 21, Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29231 (April 19, 2024)
[13] Question 24, Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29231 (April 19, 2024).

Importantly, the FDIC proposal, while not requiring CBAs, does envision a role for the regulator to examine whether bank applicants are implementing CBAs and community commitments when made. "As appropriate, claims and commitments made to the FDIC to support the FDIC's evaluation of the expected benefits of the merger may be included in the Order, and the FDIC's ongoing supervisory efforts will evaluate the Insured Depository Institution's (IDI's) adherence with any such claims and commitments."[14] We strongly support this aspect of the proposal.

There is precedent for this approach in the merger approval of Valley National Bank and 1st United Bank, wherein the OCC made compliance with the commitment to develop and implement a CRA Plan a condition of merger approval, and where we understand the OCC examined Valley National Bank's performance under the CRA Plan during future CRA examinations.[15]

When CBAs, plans and/or commitments are entered into or made by bank applicants, they become part of the record upon which regulators, investors and community stakeholders rely in formulating decisions and opinions about the merger. These statements should be treated to no less scrutiny and oversight than public statements upon which investors rely. As such, it is imperative that all such public commitments are met and that promises are kept. Only the regulators can enforce these commitments, which can be accomplished by requiring compliance as a condition of merger approval, by monitoring performance under the CBA going forward, and by imposing consequences if banks fall short in their efforts to meet CBA and community commitments.

- Branches closures should be mitigated and meaningful notification required. Branch closures are an all-too-common feature of bank mergers. The Federal Reserve Bank of Philadelphia found that between

[14] Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29242 (April 19, 2024).
[15] See CRA Decision #163 October 2014, available at: https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2014/crad163.pdf

2019-23, a period of large merger volume, the number of banking deserts across the country increased by 271, leaving over 760,000 more people without adequate access to branches. A high number of branch losses came as "large" and "very large" banks receded. In absolute terms, most branch losses and desert growth happened in predominantly white, higher-income suburban neighborhoods. However, areas with higher concentrations of lower-income, Asian, Black, and disabled people, as well as "racially diverse" areas, lost branches at a "disproportionate rate." Banking desert increases in Black neighborhoods "outpaced the national average."[16] These deserts especially hurt older adults who are more likely to bank in person, a fact that enables banks to detect elder financial exploitation as recognized by the OCC and FDIC since at least 2013.[17]

We strongly support the FDIC's proposal that bank applicants provide in the public portions of the application a list of branch closures expected over the next three years, and a discussion of the impact this will have on local communities. The regulators should require that this list include the specific address of each branch to be closed, as well as a description as to whether the branch is in a low or moderate income (LMI), majority minority, and/or rural census tract. Bank applicants should be required to describe in the application the impact such closures will have on the job, credit and reinvestment needs of local communities.

In order to prevent this requirement from being rendered meaningless, the list of branch closures should be incorporated into any merger approval order, and bank applicants should be prohibited from closing any branches not on the list in the ensuing three years.[18]

- Job loss or gain should be part of convenience and needs analysis.[19] Customer-facing tellers and community development officers are often

[16] https://www.philadelphiafed.org/community-development/credit-and-capital/u-s-bank-branch-closures-and-banking-deserts
[17] https://files.consumerfinance.gov/f/documents/cfpb_elder-abuse-guidance_2013-09.pdf
[18] Question 26, Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29231 (April 19, 2024).
[19] Question 27, Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29231 (April 19, 2024).

integral parts of the community. We have heard from our members that the loss of such officers from acquired institutions harms communities, community serving organizations, and local customers. Banks should plan to retain tellers and front-line staff with comparable hours and wages, especially so if a bigger bank takes over a community bank.[20] Additionally, non-compete clauses for such workers should be extinguished in all mergers, not just where there is divestiture, as currently.

- Climate/weather resiliency investments and commitments, blue lining practices or risks (where LMI communities of color are more likely to be deprived of products or charged more due to perceptions about climate vulnerability), and bank financing of fossil fuels should all be part of the convenience and needs and fair housing evaluations.[21] These bank practices go to the heart of access to credit concerns and the physical and economic health of communities. The OCC proposal notes that "the OCC considers the probable effects of the proposed business combination on the community to be served."[22] Similarly, the FDIC proposal states that "Applicants [would be] expected to demonstrate how the transaction will benefit the public."[23] The FDIC and the OCC should clarify that the convenience and needs factor includes broad consideration of climate-related impacts, such as reduced access to credit in climate vulnerable areas and negative impacts on the community more generally, such as effects resulting from activities that accelerate climate change (e.g., the financing of fossil fuels) and the failure to mitigate such harms through the promotion of robust bank and client transition plans.

Managerial and financial resources and future prospects analysis must be more robust.

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[20] Question 29, Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29231 (April 19, 2024).
[21] Questions 27, 28, Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29231 (April 19, 2024).
[22] 89 Fed. Reg. at 10018.
[23] Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29242 (April 19, 2024).

- Any bank applicant record of noncompliance with fair lending, fair housing, CRA and consumer protection laws, including laws and rules designed to prevent elder financial exploitation, must be deemed inconsistent with approval.[24] Such records should include not only consideration of final orders from federal agencies, but also consider private actions and administrative complaints, as well as any research, comment letters, or media reports entered into the record. Federal agencies have limited budgets and capacity and are only one part, albeit an important part, of the civil and consumer rights enforcement ecosystem.

  Banks with poor records of compliance should not be allowed to be acquired or else such a merger would result in a larger pro forma bank that is less able to ensure compliance (and could therefore have an even greater harmful impact on communities). Importantly, allowing or encouraging noncompliant banks to be acquired by other banks could create perverse incentives for poor compliance by banks that wish to be acquired. Similar arguments can be made in the context of Anti Money Laundering compliance.[25] Poor performance and noncompliance should be met with consequences and penalties, not benefits in the form of merger related payouts.

- Assessments of managerial resources should include climate-related financial risk expertise, including with respect to developing plans and strategies to manage risks and take advantage of opportunities for investments in climate resiliency.

- Management ratings should be made public or referenced for the sake of transparency. This will create further incentives for better performance and heightened managerial capacity. So too, consumer compliance

[24] We are concerned by language in the proposal suggesting discretion here. "A less than Satisfactory consumer compliance rating *may* present significant concerns in resolving this matter." (italics added), FDIC proposal p. 95). Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29242 (April 19, 2024).
[25] Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29235 (April 19, 2024).

ratings should be made public, or referenced in the regulators' analysis and Orders.

- Financial resources and future prospects considerations should include climate-related financial risk, including the extent of exposure to transition risk and physical risk, in light of current and future political and market dynamics. The regulators do consider the anticipated risk profile, which must necessarily include climate-related financial risks, of any pro forma bank. Merger approval orders should discuss how climate-related financial risk is reduced or exacerbated by any merger. Long-term impacts should be considered.[26] The OCC and the FDIC should also consider climate-related financial risks when determining whether to impose conditions related to capital, liquidity, etc.

Financial stability analysis must not minimize the potential impacts of "smaller" bank failures and climate-related financial risks.

- We are concerned with the FDIC setting $100 billion as the threshold as to when a merger poses heightened risks requiring further scrutiny. In fact, the FDIC proposal itself discusses the harms caused and costs incurred by the failure of the $30 billion asset Indymac Bank.[27] California communities are still reeling from the impacts of that bank failure, and its aftermath.

- Bank regulators have recognized climate-related financial risks as a threat to the financial stability of the United States.[28] The statutory requirement to consider "risk to the stability of the United States banking or financial system"[29] makes no exception for climate-related financial risks, and the agencies provided no notice that they intended to exclude such risks. Therefore, excluding climate-related financial

[26] This approach would be consistent with the agencies' Principles for Climate-Related Financial Risk Management. 88 Fed. Reg. at 74187.
[27] Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29234 (April 19, 2024).
[28] "Principles for Climate-Related Financial Risk Management for Large Financial Institutions," 88 Fed. Reg. 74,183, 74,186 (Oct. 30, 2023).
[29] 12 U.S.C. § 1828(c)(5).

risks would be inconsistent with the Bank Merger Act and arbitrary and capricious under the Administrative Procedure Act. The agencies should clarify that references to risks to financial stability in the final policy statements incorporate climate-related financial risks.

- The OCC and FDIC proposals suggest that financial stability risks would manifest only in the event of material distress or failure. This approach to financial stability risks would be overly narrow and at odds with clear congressional intent. The requirement that the agencies "take into consideration . . . the risk to the stability of the United States banking or financial system" was added to the Bank Merger Act by the Dodd-Frank Act.[30] The Dodd-Frank Act recognized that financial stability risks can arise not only due to the distress or failure of a financial institution, but also due to a financial institution's activities.[31] In other words, considerations of financial stability risks under the Bank Merger Act must include an evaluation of a resulting institution's *activities* on financial stability, not just the impacts of its distress or failure.

  For example, a large resulting institution may originate and distribute risks to the rest of the financial system or increase aggregate climate-related financial risks through financing of fossil fuel emissions. The agencies may determine that the resulting institution would remain in safe and sound condition despite generating these risks. But other institutions - including insurers and institutions relying on insurers to absorb losses, [32] as well as small banks which may have significant physical risk in the form of large commercial real estate portfolios in climate vulnerable areas – may not. Financing of fossil fuel emissions is contributing to the ongoing insurance crisis, will lead to larger insurance protection gaps, and creates greater threats to financial stability. These and other contributions to financial stability risks must

[30] Pub. L. 111–203, § 604(f).
[31] Pub. L. 111–203, §§ 112, 113, 115, 165 (12 U.S.C. §§ 5322, 5323, 5325, 5365).
[32] The Financial Stability Oversight Council has discussed the financial stability risks associated with reduced availability of insurance coverage. https://home.treasury.gov/system/files/261/FSOC2023AnnualReport.pdf; https://home.treasury.gov/system/files/261/FSOC2022AnnualReport.pdf.

be considered alongside the risks that would result from the distress or failure of the resulting institution itself.

- Bank applicants should be required to demonstrate that any merger will result in a *decrease* in climate-related financial risk[33], as evidenced by robust transition plans, commitments to decrease fossil fuel finance or carbon intensive activities, a reduction in physical risk consistent with fair housing and fair lending laws, and a commitment to increase climate and weather resiliency investments in low-income communities of color.

Further, the FDIC proposal references "potential volatility of the resulting IDI's funding structure," which could be affected by and made vulnerable to transition risk. The proposed Statement of Policy notes that the "FDIC may not be able to find favorably on this factor when the resultant IDI's organizational and funding structure preclude its ability to: (i) continue operations and activities until they can be sold or wound down, (ii) sell key business lines or large asset portfolios, and (iii) be marketed for sale in a manner that limits the potential for losses to the Deposit Insurance Fund.[34] Regulators must consider climate-related transition risk when evaluating this factor.

No less an authority than the Financial Stability Oversight Council (FSOC) has identified climate related financial risk as a top concern. In the words of Treasury Secretary Yellen, "the Council is focused on member agencies enhancing assessment efforts and increasing coordination around climate-related financial stability risks from increasingly severe and frequent climate-related events."[35] In its 2023 Annual Report, FSOC discussed "climate change as an emerging and increasing threat to U.S. financial stability."[36] Because climate-related financial risk is an emerging risk, the agencies should clarify

[33] Question 30, Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29234 (April 19, 2024).
[34] Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29240 (April 19, 2024).
[35] https://www.banking.senate.gov/imo/media/doc/yellen_testimony_2-8-24.pdf
[36] https://home.treasury.gov/system/files/261/FSOC2023AnnualReport.pdf

that it is considered in the bank merger process through references in agency Policy Statements and relevant Manuals.

The merger process must be reformed to provide meaningful opportunity for impacted communities to provide input and to inform the ultimate decision by regulators.

The current process is deeply flawed and stacked against community and consumer interests at every turn.[37] The FDIC proposal notes that 93% of bank merger applications are approved.[38] The bank merger process must be substantially changed to provide a meaningful opportunity for residents, small businesses, and communities to provide input and receive substantive responses to their concerns.

- Regulators should treat pre-filing process communications as ex parte communications by summarizing communications for the public record and responding quickly to any Freedom of Information Act (FOIA) requests for merger-related information.[39] The public cannot meaningfully and fairly comment on a merger application if certain records are improperly withheld for an undue period of time.

- On regulatory and bank applicant websites, there should be clear points of contact with email addresses and phone numbers to request the public file and/or to engage bank applicants and the regulator.[40] We have experienced non-consumer-friendly regulatory websites, non-responsive bank applicants, and bizarre search function results that have made

[37] Question 23, Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29231 (April 19, 2024).
[38] Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29227 (April 19, 2024).
[39] The FDIC discusses the pre-filing process at Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29239 (April 19, 2024).
[40] The current process makes it difficult for the public to provide feedback on mergers, which frustrates the agencies' goal of encouraging public input to create a strong record on which to base a merger decision. As the FDIC notes, "Public feedback is an important component of the FDIC's review of merger applications." Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29239 (April 19, 2024).

accessing public portions of bank applications extremely difficult. How can the public be expected to comment in such circumstances?

- Bank applicants must be required to respond to all comments submitted on a merger, those comments should be made part of the public record, and any final Order must address all public comments. The OCC's proposal has good language on this that suggests comment periods should be extended if bank applicants are non-responsive.[41]

  Similarly, the FDIC proposal suggests it "will not approve a merger application if adverse CRA comments have not been resolved."[42] This has not at all been our experience with merger decisions by the FDIC, the OCC, or Federal Reserve Board of Governors.

- The regulators should make all agency questions and requests for applicants, and all responses thereto, part of the public record. The Federal Reserve Board of Governors here provides a positive example with its Additional Information requests which are sent to all parties commenting on the merger, and bank applicant responses thereto are likewise made available to all commenters. This should be the norm. In contrast, in the recent approval of Washington Federal Bank's acquisition of Luther Burbank Savings, the FDIC Approval Order and Statement notes that certain concerns that we identified with the merger were addressed, in ways that were not explained to us, through the use of analysis and materials, which were not shared with us. And our current efforts to seek these records via a FOIA request have been initially rebuffed.

- We agree with suggestions that the regulators should eschew the policy of encouraging or allowing for quiet application withdrawals where denial

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[41] "the OCC may find that additional time is necessary to develop factual information, and thus warrant extending the comment period, if a filer's response to a comment does not fully address the matters raised in the comment, and the commenter requests an opportunity to respond." Business Combinations Under the Bank Merger Act, 89 Fed. Reg. 10,014 (Feb. 13, 2024).

[42] Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29239 (citing 12 CFR 303.2(c) and 303.2(l).

of an application was possible or likely. The regulators should be more transparent about the reasons bank mergers may not be acceptable.

- Public hearings should be required wherever there is a significant protest of a bank merger, based on the number of commenters or the substance of the concerns raised.[43] We are concerned that the FDIC proposal's $50 billion threshold above which there may be a presumption of a public hearing will have the practical effect of discouraging public hearings that are below that threshold. Small mergers can have profound impacts on rural and other local communities, especially where bank applicants both operate in the same, local markets. The presumption should be that a merger protest triggers a public hearing or meeting. We appreciate the FDIC's proposal to create an expectation to hold a public hearing if there are "a significant number of CRA protests," but we question what constitutes a "significant number."[44]

- Merger approval Orders must address comments submitted by the public. The FDIC proposal notes that "The FDIC may not be able to find favorably on any given statutory factor (or therefore approve the application) if there are unresolved deficiencies, issues or concerns (including with respect to public comments)…"[45] This is not our experience, and certainly was not the case in the merger of Washington Federal Bank and Luther Burbank Savings. We raised concerns about significant lending disparities, displacement financing, managerial resources, and climate-related financial risk in comments endorsed by over fifty organizations. Yet no analysis or mention was made in the Order or Statement relating to our displacement, management, or climate[46] concerns. Perhaps this should not have surprised us given the

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[43] Question 22, Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29231 (April 19, 2024).
[44] Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29242 (April 19, 2024).
[45] Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29242 (April 19, 2024). FDIC proposal p 35
[46] Moody's recently placed Washington Federal Bank on review for downgrade due to CRE loan concentration, a point we raised in our comments relating to climate related financial risk, but which was

FDIC's practice of issuing extremely short Orders of two or three pages. Yet the Statement accompanying the Order cited over 100 comments submitted in favor of the merger, presumably requested by the bank AFTER the comment period closed, as well as confidential information submitted by bank applicant and a supplemental lending analysis, none of which were provided to us for opportunity to review or comment. We have not even been able to access these documents to this point through the FOIA process. The FDIC's process and practices are inconsistent with its stated goal of transparency.

- Regulators should develop policies to address the growing concern of industry astroturfing and the potential for Artificial Intelligence (AI) to be used to corrupt the public input process. When Rise Economy (formerly the California Reinvestment Coalition) found that fabricated emails were submitted in favor of the OneWest/CIT bank merger in the name of people who did not even know about the merger[47] (and were cited approvingly in that Approval Order), we requested agency answers to questions about who was responsible, what action was taken in response, and what policies were put in place to ensure this would not happen again. We never received any reply to such requests.

  AI presents a new and complex threat to the integrity of the bank merger process. Regulators should try to get out in front of this issue before it overwhelms the merger approval and rule-making processes.

- There should be an administrative appeals process for community groups to challenge agency merger approvals that are inconsistent with an agency's own procedures.

- We support the proposal for the banking agencies to conduct a formal review of past mergers. We urge that such review endeavor to determine

not addressed in the FDIC's Order or Statement. See https://www.globest.com/2024/06/10/moodys-places-six-banks-on-review-for-cre-loan-concentration/

[47] https://theintercept.com/2018/09/29/joseph-otting-occ-onewest-bank-merger-cit/

if prior mergers have tended to result in: stronger institutions,[48] more branches in impacted areas,[49] job gains and improved working conditions, lower fees and rates charged to consumers and small businesses for deposit and loan products, greater reinvestment, philanthropy and financial products and services in low-income communities of color, decreased financing of fossil fuels or high carbon emission activities, increased climate and weather resiliency investments in low-and moderate-income communities of color, enhanced financial stability, and promises to communities being kept.

- Transparency and public participation enhancements noted above should also inform reforms to the emergency merger approval process in the context of failing financial institutions so that anti-competitive, convenience and needs, and public benefit considerations are not completely ignored in favor of FDIC Deposit Insurance Fund prioritization. This may require Congressional action.

  12 CFR 5.2(b) provides that "[t]he OCC may adopt materially different procedures for a particular filing, or class of filings as it deems necessary, for example, in exceptional circumstances or for unusual transactions, after providing notice of the change to the filer and to any other party that the OCC determines should receive notice." In its proposal, the OCC notes it has this discretion for particular filings and gives the example of a failing bank. But the OCC should be clear on what the process is in that case, should require acquiring banks to adopt any CBAs or community commitments made by the failing bank, and should provide the public an opportunity to comment, even if within a shorter period.

  Last year, we witnessed the failure of Silicon Valley Bank, which had made an $11 Billion reinvestment commitment to Massachusetts and California communities which was at risk of disappearing. To its credit,

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[48] See Silicon Valley Bank failure after its acquisition of Boston Private Bank, which helped propel SVB's incredible growth to over $200 Billion in assets.

[49] How many branches closed as a result of mergers within the first three years of approval, and what were the demographics of those neighborhoods. As one example, Mechanics Bank closed 30 branches after it acquired Rabobank, even after asserting it would strive not to close any branches.

the acquiring First Citizens Bank agreed to collaborate with affected communities and substantially adopt the Silicon Valley Bank commitments.

In stark contrast, JPMorgan Chase acquired the failed First Republic Bank through the invocation of the systemic risk exception, failed to make any community commitments, ignored First Republic Bank's commitments relating to fossil fuel finance, and immediately closed a number of First Republic Bank branches. At a minimum, the regulators should not allow banks with over 10% of U.S. deposits, which are currently prohibited from merging in most circumstances, from buying failing banks unless there are no other buyers.

Anti-competitive considerations should analyze bank applicant activities where the Applicants have branch operations and where they conduct substantial lending activity.

Regulators should analyze bank activity where banks have branches and where substantial lending is conducted, which will be represented by facility based and retail lending assessment areas under the new CRA rules.[50]

Ultimately, the regulators must do better during the bank merger process to facilitate community input, require bank applicant responsiveness to community concerns and needs, and ensure that mergers will only be approved if communities will receive greater benefits in the form of increased reinvestment, jobs, competition and lower fees, fair housing and fair lending compliance, consumer protection and efforts to fight climate change.

Thank you for providing an opportunity to comment. Please feel free to reach out to Kevin Stein at (415) 864-3980 or kstein@rise-economy.org if you have any questions.

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[50] Question 12, Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, 89 Fed. Reg. 29228 (April 19, 2024).

Very Truly Yours,

Kevin Stein
Chief of Legal and Strategy

Endorsed by the following organizations:

Rise Economy
ASIAN, Inc. 美亞輔鄰社
California Capital Financial Development Corporation
California Coalition for Rural Housing
California Community Land Trust Network
California Housing Partnership
CCEDA
CoBiz Richmond, Inc.
Consumer Action
Consumers for Auto Reliability and Safety
East Bay Housing Organizations
Elder Law & Advocacy
Faith and Community Empowerment (FACE)
Housing and Economic Rights Advocates
Just Solutions
Legal Assistance for Seniors
Logan Heights Community Development Corporation
Main Street Launch
MCREA
Thai Community Development Center (Thai CDC)
The Central Valley Urban Institute
Vermont-Slauson LDC, Inc.