UNIDOSUS
STRONGER COMMUNITIES. STRONGER AMERICA.

HEADQUARTERS
Raul Yzaguirre Building
1126 16th Street NW, Suite 600
Washington, DC 20036-4845

202.785.1670
202.776.1792
unidosus.org

June 13, 2022

Submitted electronically to comments@fdic.gov

Martin Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429

Re: Request for Information and Comment on Rules, Regulations, Guidance, and Statement of Policy on Bank Merger Transactions (RIN 3064–ZA31)

Dear Acting Chairman Gruenberg:

On behalf of UnidosUS, we submit these comments in response to the Federal Deposit Insurance Corporation's (FDIC) request for information and comment on rules, regulations, guidance, and statement of policy on bank merger transactions.

UnidosUS, previously known as NCLR (National Council of La Raza), is the nation's largest Hispanic[*] civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers at the national and local levels.

The FDIC's Request for Information (RFI) notes that significant changes in the bank industry over the past three decades necessitates a review of the regulatory framework used for bank merger transactions. These changes included the consolidation of banks, drastic reductions in small banks and bank branches, and increases in the cost of banking for low-income people and Latinos.

A strong and modern bank merger regulatory framework can help to promote competition among financial institutions, which in turn creates a more inclusive and affordable marketplace for financial products. Our comments highlight the impact of bank mergers on low-income people and Latinos, and points to parameters related to the *public interest factor* in the evaluation process that could be improved to ensure that mergers will create a more inclusive and affordable marketplace. Below, we also highlight a few key changes for areas in which the proposal could also be strengthened.

[*] The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout our materials to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race. Our materials may also refer to this population as "Latinx" to represent the diversity of gender identities and expressions that are present in the community.

Bank mergers adversely impact Latinos and low-income people.

The FDIC's RFI highlights the concerning trend in bank consolidation as a leading reason to update bank merger regulations. For instance, depository institutions with total assets of more than $100 billion comprise less than 1% of the total number of insured depository institutions, yet they hold about 70%of total industry assets and 66% of domestic deposits.[1] Meanwhile, over the last 30 years, the number of institutions with assets less than $10 billion declined from 15,099 in 1990, to 4,851 in 2020, a reduction of approximately 68%.[2]

Such a high level of financial institution concentration has negative implications for low-income people and Latinos. For example, one study from the *Yale Journal of Regulation* found that large bank mergers, "tend not to deliver promised efficiency gains or public benefits… bank mergers lower the availability and increase the cost of credit for borrowers, especially small businesses. And merging banks typically close branches, inconveniencing customers who rely on proximity to branch offices."[3]

Data also show that during the same period of time that banks consolidated, bank branches in majority non-White and low-income counties closed at a faster rate than in majority White counties and wealthier areas. For instance, the National Community Reinvestment Coalition (NCRC) found that "one third of the branches closed from 2017 to 2021 were in a low- to moderate-income and/or a majority-minority neighborhood."[4] As a result, in majority non-White counties, there are only 27 financial institutions per 100,000 people, compared to 41 per 100,000 in majority-White counties.[5]

In addition to increases in branch closures, mergers also impact fees and the costs of deposit accounts. The same study from the *Yale Journal of Regulation* found that "mergers tend to inflate the fees that banks charge consumers to maintain deposit accounts."[6] And the costs associated with deposit accounts did increase as banks consolidated. For example, in 2021:

- Average monthly fees for checking accounts that aren't free rose from $9.29 in 1998 to a record high of $16.35.[7]
- Average fees for overdraft rose from $21.57 in 1998 to a record high $33.58.[8]
- Average ATM fees rose from $1.97 in 1998 to $4.59 today.[9]

Latinos bear the brunt of these fees. For example, research shows that Latinos pay $14 per month, on average, for ATM, overdraft, and routine service charges on checking accounts, while Black account–holders report paying $12 a month. Whites, in contrast, pay an average of $5 per month.[10]

Finally, evidence suggests that bank mergers could push people out of the bank system. A 2018 study from Harvard University, which compared deposit account fees and costs between small banks that are acquired in a merger and those that are not, found that "depositors leave small banks acquired by large banks, at least partially due to higher fees and required minimum balances after the acquisition."[11] The study also finds evidence of "depositors, particularly those in low-income neighborhoods, exiting the banking system completely"[12] in communities where a small bank was recently acquired in a merger. Yet the cost of deposit accounts is one of the major barriers to obtaining an account, and Latinos remain disproportionately unbanked: roughly 12% of Latinos are unbanked, compared to 2.5% of Whites.[13]

Strengthen the public interest factor to ensure that mergers don't adversely impact low-income people and Latinos.

The FDIC evaluates four factors during a merger application process: relevant geographical market, relevant product market, analysis of competitive effects, and a consideration of the public interest. We focus our recommendations on the public interest factor to help assure that mergers will make bank products more accessible and affordable for low-income people and Latinos.

First, the FDIC should impose a requirement that bank merger applicants have an "outstanding" Community Reinvestment Act (CRA) rating, instead of merely a "satisfactory" rating. The current bank merger framework allows agencies to approve mergers for banks with merely a "satisfactory" CRA rating.[14] Raising the standard would, as the study from the *Yale Journal of Regulation* noted, "ensure that only firms committed to meeting the credit needs of LMI communities are permitted to expand."[15]

Second, Community Benefits Agreements (CBAs) should be required, strengthened, and made enforceable for all mergers that result in an institution with an asset size of $10 billion or more. CBAs should not be used merely to approve a merger in a case in which the competitive factors test finds a merger would be anticompetitive. Instead, CBAs should be an expected and separate requirement under which community-based organizations and community members negotiate specific and enforceable commitments.

Additionally, CBAs should include a commitment to provide a certain amount of loans and investments, as well as a commitment to open bank branches and offer affordable deposit accounts. For instance, banks could commit to offering accounts that meet BankOn account standards in underserved areas.

Moreover, CBAs should be required for all mergers that result in an institution with an asset size of $10 billion or more. The agreement should cover the banks' entire geographical footprint and be a part of the merger application subject to public comment.

Third, the convenience and needs factor as it relates to the public interest test should be strengthened. In assessing the convenience and needs of the community to be served, the FDIC will consider the extent to which the proposed merger transaction is likely to benefit the general public through higher lending limits, new or expanded services, reduced prices, increased convenience in utilizing the services and facilities of the resulting institution, or by other means.

The FDIC will note and consider each institution's CRA performance evaluation record in this part of the process. However, as is evident by the increased rate of branch closings in low income communities and communities of color, the decreasing number of smaller banks, and the increasing costs of bank products, the convenience and needs factor can and should usefully play a more central role in the evaluation process during a bank merger. For instance, the FDIC could:

- Consider giving the convenience and need element more weight in the evaluation process.
- Consider the impact on branch closings in the affected community.
- Take into account, an institution’s existing relationship, or lack thereof, with low-income communities by seeking input from community-based organizations and community members during the evaluation process, in addition to considering a firm’s CRA rating.

Finally, to inform the evaluation, community input should be required during the application process. Community-based organizations and community members should be given a prominent role in providing input in the merger process. Community input should be provided via townhall meetings, virtual webinars, and written comments.

There are several reports of opaque interactions between agencies and financial institutions before an application even begins.[16] Increasing community input provides a democratic element to the merger process and increases its transparency. Increasing the public’s role in merger applications allows an opportunity for impacted communities to voice their needs and concerns, and could shed light on the intricacies of the merger process that would otherwise be hidden behind closed doors.

Conclusion: The FDIC’s effort to modernize bank merger regulations could be helpful to Latinos and low-income consumers.

We appreciate the opportunity to comment on the FDIC’s request for information and support the agency’s effort to adopt a framework that will promote a competitive marketplace that is affordable and inclusive of low-income people and Latinos. We look forward to the FDIC’s future work on bank mergers and invite additional dialogue on this issue.

For questions or for additional information, please contact Santiago Sueiro, Senior Policy Analyst, at ssueiro@unidosus.org.

Notes

1 Federal Deposit Insurance Corporation, Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions (Washington, DC: FDIC, March 2022), https://www.govinfo.gov/content/pkg/FR-2022-03-31/pdf/2022-06720.pdf.

2 Ibid.

3 Jeremy Kress, "Modernizing Bank Merger Review," Yale Journal on Regulation 37 (2020): 435, https://openyls.law.yale.edu/bitstream/handle/20.500.13051/8305/Kress_Article._Publication___1_.pdf.

4 Jad Edlebi, Bruce Mitchell, and Jason Richardson, *The Great Consolidation of Banks and Acceleration of Branch Closures across America* (Washington, DC: National Community Reinvestment Coalition, February 16, 2022), https://ncrc.org/the-great-consolidation-of-banks-and-acceleration-of-branch-closures-across-america/.

5 Jacob Faber and Terri Friedline, *The Racialized Costs of Banking* (Washington, DC: New America, June 2018), https://d1y8sb8igg2f8e.cloudfront.net/documents/The_Racialized_Costs_of_Banking_2018-06-20_205129.pdf.

6 Jeremy Kress, "Modernizing Bank Merger Review."

7 Matthew Goldberg, "Survey: Free checking accounts on the rise as total ATM fees fall," Bankrate, October 20, 2021, https://www.bankrate.com/banking/checking/checking-account-survey/.

8 Ibid.

9 Ibid.

10 Michelle Fox, "Latinos, Blacks pay over twice as much in bank fees, survey finds," NBC News, January 13, 2021, https://www.nbcnews.com/news/latino/latinos-blacks-pay-over-twice-much-bank-fees-survey-finds-n1254145.

11 Vitaly Bord, *Bank Consolidation and Financial Inclusion: The Adverse Effects of Bank Mergers on Depositors* (Boston: Harvard University, December 1, 2018).

12 Ibid.

13 Federal Deposit Insurance Corporation, *How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey* (Washington, DC: FDIC, October 2020), https://www.fdic.gov/analysis/household-survey/2019report.pdf.

14 Jeremy Kress, "Modernizing Bank Merger Review."

15 Ibid.

16 Georgia Kromrei, "Inside the government's feeble fight to end redlining," *housingwire.com*, March 29, 2022, https://www.housingwire.com/articles/inside-the-governments-feeble-fight-to-end-redlining/.