



April 23, 2024

RE: Docket ID OCC–2023–0017

To Whom it May Concern:

The National Community Reinvestment Coalition (NCRC) appreciates the opportunity to comment on proposed changes to the OCC’s regulations regarding Business Combinations Under the Bank Merger Act. Bank mergers profoundly impact banks’ capacities to serve the convenience and needs of communities. If the federal bank agencies do not adopt robust reviews of bank merger applications, mergers are likely to harm communities through reductions in loans, branches, and loss of jobs. On the other hand, banks will be able to improve their capacity to serve communities if the agencies ensure that mergers preserve banks’ institutional structures and commitments for lending and investing in all communities and do not create markets without effective competition.

NCRC is a network of more than 700 organizations dedicated to creating a nation that not only promises but delivers opportunities for all Americans to build wealth and attain a high quality of life. We work with community leaders and policymakers to advance solutions and build the will to solve America’s persistent racial and socio-economic wealth, income and opportunity divides, and to make a Just Economy a national priority and a local reality.

Under the proposed rulemaking, the OCC adopts positive steps to remove streamlined procedures that are likely to result in merger approvals that harm communities and in adopting a revised policy statement that describes comprehensive metrics for assessing impacts on convenience and needs. However, the OCC’s proposed rule does not rescind harmful changes to merger application procedures adopted during the tenure of the former Comptroller Joseph Otting. These include making it more difficult for a comment submitted by a community organization to be deemed “substantive” and thus worthy of OCC analysis during the merger application process.

NCRC urges the OCC, the FDIC, and the Federal Reserve Board to recognize community benefit agreements and plans involving discussions with community-based organizations as one of the most effective means for banks to ascertain and respond to community needs. Ironically, except for the OCC’s streamlined application form, the agencies do not reference community benefit agreements (CBAs) or benefit plans in either their regulations or application preparation materials. They sometimes discuss CBAs in approval orders. This rulemaking and the companion effort by the FDIC is a keen opportunity to elevate the consideration of CBAs and emphasize the importance of sustained and deep community input into banks’ plans for serving convenience and needs.

In summary, our comment outlines the following positions:

- Strong approval of the OCC’s proposal to remove expedited approval timelines of a mere 15 days after the end of the comment period, which would apply to most banks.
- Supporting the adoption of the more robust interagency merger application form that includes more detailed questions but continuing the use of the question about commitments from the streamlined application.
- Supporting the draft policy statement on convenience and needs that includes more detail than is usual in merger reviews including proposed reviews of branch closures, job losses, product affordability, and impacts on community development financing.
- Consideration of community benefits agreements and partnerships with community-based organizations in assessing a bank’s ability to meet convenience and needs.
- Asking the OCC to add to the policy statement connections between the convenience and needs factor and anti-trust analysis. When anti-competitive impacts are harmful, the policy statement should include specifics about how improvements in meeting convenience and needs can compensate for the anti-competitive impacts.
- Including language about interagency coordination with the Consumer Financial Protection Bureau in the proposed statement regarding fair lending and consumer protection matters.
- Including communities of color and underserved census tracts as geographical areas in which impacts of convenience and needs is to be assessed.
- Supporting the OCC’s proposal to expand circumstances in which public meetings and hearings are required in the case of large bank mergers (combined assets above \$50 billion) but also asking the OCC to hold hearings in case of significant overlap of branch networks and when CRA ratings are low on a state or lower level of geography.
- Improving outreach to underserved communities in part through the adoption of a public registry on which interested stakeholders can sign up to be informed of CRA exams and mergers.
- Improvements in the format of hearings and meetings to foster robust discussion and more details about banks’ post-merger plans.
- More transparency regarding when conditional approvals and rejections are warranted.
- Requirements for banks to describe their efforts to achieve diversity on their board, senior management, and throughout their branch network.
- Although not part of this rulemaking, NCRC urges the OCC to change its procedures outlined in its Business Combination Manual which could taint the merger process in a biased manner towards approval of mergers.

While NCRC welcomes the OCC’s proposed changes to its merger application procedures, we urge the OCC to engage the Consumer Financial Protection Bureau (CFPB), the Federal Reserve Board, and the Federal Deposit Insurance Corporation (FDIC) on developing a comprehensive interagency update to merger application procedures that maximize public benefits and minimize harms associated with mergers.

Proposed Elimination of Expedited Time Period and Streamlined Application

NCRC strongly supports the elimination of the expedited time period for deciding on merger applications. Under current regulations governing merger applications, the OCC is committed to ruling on most bank applications within 15 days after the end of the 30 day public comment period if a bank meets certain conditions including Satisfactory and Outstanding CRA ratings.¹ In proposing the deletion of the expedited time period, the OCC recognizes that merger applications pose complexities including those concerning the convenience and needs factor that cannot be resolved in a mere 15 days after the close of the comment period.

About 98 percent of banks pass their CRA exams but passing ratings in many situations do not indicate that CRA performance is uniformly commendable across all geographical areas or product markets. If bank mergers are to pass legal muster of benefiting the public,² the benefits must be uniform across all geographical areas including those in which performance on CRA exams resulted in failing ratings or where banks are barely passing as indicated by Low Satisfactory ratings. Moreover, as described below, future performance is likely to change in many situations due to institutional changes in the post-merger bank. An artificial 15-day period to resolve these issues is indeed arbitrary as the OCC itself admits.³

The OCC also proposes to replace its streamlined application form to the interagency application form for all proposed mergers.⁴ NCRC supports this proposed change because the interagency branch application form is more comprehensive. However, the interagency form does not include a question about whether the applying bank will honor a previous commitment with a community-based organization whereas the OCC form does.⁵ The OCC should continue asking this important question and make the answer publicly available just like all other aspects of the bank application and answers to questions on the application form.

Regarding CRA and convenience and needs, the interagency application form asks the following:

- Actions taken by the applicant to identify community needs.
- Any changes in product offerings or services resulting from the proposed merger.
- How any replacement products will serve convenience and needs.
- Any enhancements to products due to the proposed merger.

¹ 12 CFR § 5.3 – Definitions, an eligible bank is one with passing CRA ratings and can take advantage of the expedited time line for mergers, <https://www.law.cornell.edu/cfr/text/12/5.3>

² FDIC webpage section regarding the Federal Deposit Insurance Act, specifically Section 18(c)(5)(B) via <https://www.fdic.gov/regulations/laws/rules/1000-2000.html>

³ Office of the Comptroller of the Currency (OCC), Notice of Proposed Rulemaking (NPR), Business Combinations Under the Bank Merger Act, Federal Register, Vol. 89, No. 30, Tuesday, February 13, 2024, p. 10011, <https://www.federalregister.gov/documents/2024/02/13/2024-02663/business-combinations-under-the-bank-merger-act>

⁴ Ibid.

⁵ Streamlined Business Combination Application, <https://www.occ.treas.gov/static/licensing/form-business-combo-app-streamlined-v2.pdf>, Interagency Bank Merger Act Application, <https://www.fdic.gov/formsdocuments/f6220-01.pdf>

- Description of bank products, programs, and activities that facilitate CRA compliance.
- List of assessment areas of the resultant institution.
- Plans for administering the CRA program of the resultant institution.
- Actions to address deficiencies in CRA records as indicated by failed ratings institution-wide or in specific areas.

The interagency form generally requires applicants to describe more thoroughly CRA programs than the OCC streamlined form, how these programs may change because of the merger, and efforts to assess community needs. The list of assessment areas and lists and descriptions of products and programs are likely to be more detailed when applicants use the interagency form as opposed to the streamlined application.

After the initial application is shared with members of the public, we encourage the OCC to continue pursuing transparency and adopt practices currently employed by the Federal Reserve Board. For example, the OCC should adopt the procedures of the Federal Reserve System on protested applications, that is, to send the protestant copies of “Additional Information” letters to the applicant banks, and the banks' responses. This flow of information ultimately will provide the OCC with more information and data with which to make a decision since the OCC will benefit from additional insights and analysis from those opposed to the merger.

Proposed Changes to Appendix A: Policy Statement Regarding Statutory Factors Under the Bank Merger Act

Convenience and Needs Factor Proposal Positive but No Connection to the Anti-Trust Factor

The OCC proposes a comprehensive review of the factor regarding the conveniences and needs of communities. If implemented rigorously, these revisions promise to ensure that banks will improve upon their abilities to serve communities.

We ask the OCC to add the FDIC’s proposed language for its policy 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. 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.”⁶ This is a concrete statement of how convenience and needs for customers must improve after a merger and is consistent with the legal requirement in federal bank merger law.

The OCC is not revising its anti-trust analysis although the impact on competition is a statutory factor in merger reviews.⁷ We suggest a reconsideration of this approach since a lack of

⁶ FDIC, Request for Comment on Proposed Statement of Policy on Bank Merger Transactions, pp. 82-83, <https://www.fdic.gov/news/board-matters/2024/2024-03-21-notice-dis-b-fr.pdf>

⁷ OCC NPR, p. 10012.

competition on a county or metropolitan level can readily lead to inferior service and price increases.

At the very least, the OCC should reiterate the connection between anti-trust analysis and the convenience and needs factor. Agencies are required to assess whether any adverse effects on the level of competition due to mergers are offset by increased abilities to serve convenience and needs.⁸ The policy statement could make clearer when this would occur. For example, if merging banks capture more than 30 percent of the local market (which is forbidden on a state level)⁹, then the merger can proceed only if the bank passes specified thresholds on convenience and needs metrics such as increases in loans and investments that significantly surpass past levels of the merging banks and/or recent increases by peer lenders in the impacted counties or metropolitan areas.

Regarding convenience and needs, the OCC proposes that its policy statement will require consideration of the impacts of the merger on:

- Branch availability in low- and moderate-income (LMI) communities
- Availability of products and cost of products and services
- Access to credit including home, consumer, small business, and small farm loans
- Job losses or reduced opportunities for jobs due to branch closures
- Community development loans and activities
- Efforts to support affordable housing and small business initiatives

This proposed list is vital because while merger application proceedings often emphasize impacts on lending, reviews of the other items on the proposed list usually receive short shrift. Agency narratives in their decisions on merger applications, for example, do not rigorously assess the impact of branch closures on access to lending or on jobs. The likely future performance in offering community development loans and investments due to changes in decision making (such as whether it remains decentralized or becomes more centralized) is not systematically reviewed although these structural issues are often raised by community organizations. The OCC should add climate remediation to its list of criteria for evaluating convenience and needs. Community development efforts will become imperiled if climate change increases health and environmental risks that disproportionately affect LMI and formerly redlining communities.

It is not sufficient to meet community needs by maintaining product availability if the products become considerably more expensive and unaffordable. The OCC policy statement should also include commitments to consult with the Consumer Financial Protection Bureau (CFPB) regarding products costs and whether the products are not deceptive and are not offered in a

⁸ FDIC webpage section regarding the Federal Deposit Insurance Act, specifically Section 18(c)(5)(B) via <https://www.fdic.gov/regulations/laws/rules/1000-2000.html>

⁹ Federal Reserve History, Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, September 1994, <https://www.federalreservehistory.org/essays/riple-neal-act-of-1994>

discriminatory manner, particularly since the CFPB has fair lending responsibilities for banks with assets of greater than \$10 billion.¹⁰

Decisions on applications rarely, if ever, consider the past post-merger records of the applying banks regarding pricing and product availability. Likewise, the decisions rarely if ever consider whether similar increases in market share or the Herfindahl–Hirschman Index (HHI) in the same or similar geographical areas impacted price and product availability in previous mergers. The recent merger analysis guidelines issued by the Department of Justice and the Federal Trade Commission hint at these types of anti-trust analysis.¹¹ The OCC policy statement should include references about how these new guidelines will inform an analysis that explores the connection between convenience and needs and anti-trust analyses.

The OCC asks whether branch availability in other communities besides LMI census tracts should be considered. NCRC suggests that communities of color be added as communities the agencies consider. In previous research, NCRC identified the quintile of census tracts with the lowest levels of home and small business loans across the country. On average, 57 percent of the residents of these tracts were people of color. The OCC should either explicitly list communities of color or underserved communities when assessing the post-merger availability of branches. NCRC has developed a methodology for considering when communities are underserved in terms of branching that the OCC should consider using or the OCC should revisit the underserved definitions regarding branching in the proposed version of the CRA rule that was finalized in the fall of 2023.¹²

NCRC urges the OCC to add to its consideration of projected branch closures and job losses associated with these closures a three-year period as the FDIC does in its proposed policy statement.¹³ This future period is long enough to rigorously evaluate possible forthcoming impacts but is not too long as to pose difficulties forecasting branching decisions in the distant future.

In contrast to CRA exams, the convenience and needs factor in merger applications considers communities beyond LMI communities. Decisions on merger applications routinely consider fair lending performance and the abilities of banks to meet needs in communities of color.¹⁴

¹⁰ Institutions subject to CFPB supervisory authority, <https://www.consumerfinance.gov/compliance/supervision-examinations/institutions/#current-list>

¹¹ Josh Silver, Analysis: *How Community Groups Can Use The New FTC-DOJ Merger Guidelines To Advance The Just Economy*, NCRC, January 2024, <https://ncrc.org/ncrc-summary-of-the-department-of-justice-and-federal-trade-commission-merger-guidelines/>

¹² Bruce Mitchell, PhD. and Josh Silver, *Adding Underserved Census Tracts As Criterion On CRA Exams* (Washington, D.C., NCRC, January 14, 2020) <https://ncrc.org/adding-underserved-census-tracts-as-criterion-on-cra-exams/> and see the description of the financial needs index in NCRC, *Redlining the Reservation*, December 2023, <https://ncrc.org/redlining-the-reservation-the-brutal-cost-of-financial-services-inaccessibility-in-native-communities/>

¹³ Proposed FDIC Policy Statement, p. 84.

¹⁴ OCC approval order regarding Application to merge MUFG Union Bank, National Association, San Francisco, California with and into U.S. Bank National Association, Cincinnati, Ohio, October 2022, includes references to the bank's community benefits plan and increases in lending to communities of color, p. 14, <https://occ.gov/news->

Accordingly, the OCC proposed statement should be more expansive than considering LMI and other communities only in the context of branch availability. The final policy statement should include a couple of sentences specifying that an analysis of the banks' abilities to meet needs for credit, deposit, and other banking services will be analyzed for LMI, communities of color, and other communities including people with disabilities.

The policy statement should also specify that community benefit agreements (CBAs) negotiated with community organizations that include measurable goals for meeting needs will be considered in needs analyses. At the very least, evidence of banks working in partnership with nonprofit organizations and local government agencies in addressing needs should be a consideration in the convenience and needs analysis. In addition, bank commitments to start or continue special purpose credit programs focused on underserved populations should be considered during reviews of merger applications. Likewise, bank commitments to serve people with limited English proficiency and people with disabilities should be a criterion in the convenience and needs factor.

The agencies should recognize in their regulations and application materials that CBAs and similar engagements with community organizations are key to identifying and responding to a variety of needs across local geographical areas. A bank's assessment of convenience and needs must include community groups in a meaningful way, and a CBA is one of the best ways to do that. Commonly, banks will conduct community meetings to gather data on convenience and needs, without reporting to the people involved the ultimate purpose of the meeting, or the subsequent use of the information gathered, much less any outcome. In contrast, a CBA that is reached with a process that involves several community organizations and has broad-based support should be viewed as a more legitimate statement of public benefit than a unilateral commitment by a bank, or a commitment made with just one or a few organizations involved. A CBA that involves several groups serving diverse communities across several states is also likely to be able to respond to a wide variety of local needs. Furthermore, whether through a CBA or some other mechanism, community commitments that contain transparency and accountability mechanisms such as third-party review of and validation of performance data should be viewed more positively than those that do not.

The OCC reiterates in the proposed policy statement that it will consider comments submitted by the public during the comment period but does not rescind the harmful changes to merger application procedures and public comments finalized during the tenure of Comptroller Otting. Under Comptroller Otting, the OCC adopted its proposal in December 2020 that a "non-substantive" comment is a generalized opinion or a conclusory statement lacking any factual

[issuances/news-releases/2022/nr-occ-2022-128a.pdf](https://www.federalreserve.gov/newsevents/pressreleases/files/orders20230117a1.pdf). Like the OCC, the Federal Reserve considers performance to people of color and communities of color, see p. 21-22 of approval order of Bank of Montreal's application to acquire BancWest, January 2023, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20230117a1.pdf>.

support.¹⁵ NCRC opposed this, saying that the OCC could arbitrarily conclude a comment lacked factual support when the comment could indeed have had factual support or data analysis. The rule established no criteria for determining if a comment lacked substance partly because it would be difficult for a rule to describe all the circumstances in which a comment would be non-substantive. The safest course of action would be deleting this provision since in the wrong hands, it can lead to arbitrary rulings.

The OCC proposed to continue considering the CRA record of the applicants when deciding on a merger application.¹⁶ At the same time, however, it did not rescind the deleterious change in merger application processing during Comptroller Otting's tenure under which the CRA record of the target bank or the acquired bank would not be considered.¹⁷ This change not only broke with decades of precedent but would be egregiously harmful in that the CRA records of both the acquiring institution and the target must be considered in determining how the new institution is likely to perform. For example, there have been instances in which the target institution has a superior CRA performance that will be imperiled should the merger proceed.

The proposal is correct that banking law requires a prospective analysis or an assessment of the likely future performance in meeting convenience and needs after the merger, not only a review of CRA performance which is retrospective and focuses on past performance.¹⁸ While past performance can provide clues regarding future performance, a merger will result in institutional changes. An assessment needs to be made regarding whether new decision-making structures or fair lending procedures are likely to enhance or detract from future abilities to meet convenience and needs. In addition, the OCC and the public should assess to what extent the merging banks promise to continue positive aspects of the past CRA performance.

Extensions of Public Comment Period Must be Granted when Information is Deficient

The proposed rule reiterates the standard procedures of public comment periods including a 30-day comment period. The OCC states the extensions can be granted such as when the applying bank does not submit all relevant information in a timely manner. While this is appreciated, NCRC suggests that the OCC adds comment periods will be extended when delays in providing information occur for any reason. We have experienced instances with the OCC and other agencies when technical issues such as web page failures prevent the timely provision of information to members of the public wishing to comment.

NCRC also appreciates that the proposed policy statement indicates that the comment period can be extended if the applicant does not address the issues in a public comment and the commenter requests additional time to respond.¹⁹ NCRC has responded to omissions and deflections in

¹⁵ OCC Final Rule, Licensing Amendments, Federal Register, Vol. 85, No. 239, Friday, December 11, 2020, p. 80407, <https://www.occ.gov/news-issuances/federal-register/2020/85fr80404.pdf>

¹⁶ OCC, NPR, p. 10018.

¹⁷ OCC Final Rule, p. 80413.

¹⁸ OCC, NPR, p. 10018.

¹⁹ OCC, NPR, 10018.

applicant responses; continuing to have this opportunity is critical to developing a full record of information for the OCC's decision-making.

Procedures for Public Meetings and Hearings Must Facilitate Broad Participation

The policy statement indicates that the OCC will continue to hold public meetings, public hearings, and private meetings to gather more information and more fully develop the record used by the OCC for deciding on applications. The policy statement indicates that public meetings are used most frequently, but the statement does not indicate the differences among the forums. We suggest that the agency more fully describe the various forums so that members of the public can understand them and have an opportunity to request a particular forum.

In general, the ability of hearings and meetings to gather information held by all the bank agencies needs to improve in order to more effectively capture the insights of the public. While we support the regulators efforts' to better ascertain in banks' applications the potential adverse impacts and benefits of the transaction, the agencies must also bolster an important role for public comments as residents or organizations serving the community are the most credible source of community needs. The hearings and meetings provide opportunities for members of the public to make brief statements, usually a few minutes in length, regarding their views of the proposed merger. While these statements can provide important facts, statements alone do not provide opportunities for members of the public with various views to engage in a robust exchange with bank representatives. A discussion and debate format would provide more information for the agencies to consider merger applications more fully.

NCRC recommends that at the conclusion of witness testimony, the agencies hold two or three panels with an agency official as the moderator and community organizations, bank representatives, and other stakeholders with various perspectives on the merger. Each panel would have four or five witnesses. The moderator can ask key questions and provide each witness with a few minutes to state his or her position. After each witness states her or his view, the moderator can allow for another round of statements that offer rebuttals or clarifications of positions stated. This format would generate more information and introduce more nuance including more options for the agencies to consider. In addition, the panels would help overcome a mere numbers game whereby either the supporters or opponents of the merger try to generate so many witnesses for their side that it appears that only one side has valid views.

The bottom line is that the OCC should allow for a question-and-answer segment involving the banks' representatives. This will be more effective than only a series of monologues in terms of helping the OCC get to the bottom of disputes involving significant issues.

The OCC should develop more transparent mechanisms for soliciting input on merger applications and CRA exams. The agency should develop a public registry in which any member of the public or stakeholder can sign up and indicate their mission and which communities or constituencies they represent. The agency would recruit a diversity of organizations to be on the registry and would routinely inform these organizations of opportunities to comment on CRA



exams and merger applications. This would be particularly valuable for recruiting organizations that represent traditionally underserved or marginalized populations including farmworkers, people of color, and poor whites.

Testimony from underserved populations about the value of bank branches and services can be especially powerful and informative regarding any proposed branch closures or other reconfigurations of bank services. The testimony can either convince the applicant to keep branches open or arrange for alternatives to closures such as donations of branches to mission-based lenders like low-income credit unions. These actions may not occur in the absence of testimony from the impacted public.

NCRC appreciates that the OCC proposed statement indicates that a factor for deciding whether to hold a public meeting or hearing is the size of the proposed merger such as mergers involving assets of \$50 billion or greater. We would encourage the agencies to indicate a presumption for public hearings in the cases of large bank mergers since these mergers will impact the largest number of markets and populations. This is in line with the value that the Acting Comptroller places on hearings.

Acting Comptroller Hsu in a recent speech stated:

“In recognition of the value that public input can provide on mergers, the OCC is considering options to facilitate such input. For example, for mergers involving larger banks, the OCC is considering adopting a presumption in favor of holding public meetings. We partnered with the Federal Reserve to hold a public meeting in March (of 2022) for the proposed U.S. Bank and MUFG/Union bank merger. Over 120 community members attended and shared their views on the needs of the community and how they may be impacted by the merger.”²⁰

The asset size of the merger should not be the only factor motivating public hearings or meetings. When merging banks have large numbers of branches in the same geographic markets, these areas can experience significant branch losses in the wake of a merger or any agency order to divest branches due to anti-trust concerns. Public hearings and meetings in these situations provide more detail about the importance of the branches and allow stakeholders more time to explore feasible alternatives to widespread branch closures including sales or donations of branches to mission-based lending institutions. In addition, if one or both banks have Needs-to-Improve or Substantial Noncompliance ratings for states and/or multistate metropolitan areas, public hearings and meetings are needed in order to help the banks develop plans for how to improve their CRA performance in these areas.

Finally, we ask the OCC to hold public hearings like the FDIC pledged in its proposed policy statement whenever there are a significant number of comments or “protests” concerning the

²⁰ Acting Comptroller of the Currency Michael J. Hsu, Remarks at Brookings “Bank Mergers and Industry Resiliency,” May 9, 2022, p. 8, <https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-49.pdf>

CRA or the abilities of the banks to meet convenience and needs.²¹ This is a clear and reasonable threshold for when to hold public hearings.

More Transparency Needed for Factors Prompting Conditional Approvals and Rejections of Applications

The proposed policy statement is silent regarding when conditional approvals and rejections are warranted. Typically, agencies issue conditional approvals when one or both of the merging banks have CRA performance or fair lending performance that is considerably worse than their peers. Conditional approvals can occur even when the banks have passing CRA ratings but there are significant deficiencies such as the banks trailing their peers by a considerable extent in the percentages of loans made to LMI borrowers or communities or when the banks have significantly higher denial rates to applicants of color than their peers. For all factors considered in merger applications, including convenience and needs, the OCC should include guidelines about when performance can merit conditional approval or when applications must be denied. This would help all stakeholders - community organizations and banks alike - better understand the process and agency expectations.

Managerial Resources Should include a Description about Diversity

NCRC urges the OCC to include in its policy statement a requirement that banks describe their efforts to promote gender, racial, and ethnic diversity in their boards, senior management, and branch personnel. Studies have indicated that increasing the presence of women in leadership positions is associated with lessening risk and improvements in financial performance.²² The OCC should require banks to produce statistics describing the demographic breakdown in their management ranks. Promoting diversity including at the branch and loan officer level is likely to also improve a bank's ability to market to and serve communities of color and underserved communities.

Change the Section in the OCC Business Combination Manual that Provides Appearance of Biasing the Agency

In a section called "Exploratory Calls or Meetings," the OCC's Business Combination Manual invites applicants with novel or complex issues to contact the OCC before filing an application. OCC licensing staff then coordinate conference calls with the applicant to discuss issues involving subpar safety and soundness records, CRA, and other inferior performance issues. The

²¹ FDIC Proposed Policy Statement, p. 85.

²² Iness Aguir, Narjess Boubakri, Miriam Marra, Lu Zhu, *Gender diversity in leadership: Empirical evidence on firm credit risk*, Journal of Financial Stability, Volume 69, December 2022, <https://doi.org/10.1016/j.jfs.2023.101185>; Remarks for an IMF/IFC Seminar, IMF First Deputy Managing Director David Lipton, *Boosting Growth Through Diversity in Financial Leadership*, April 13, 2019, <https://www.imf.org/en/News/Articles/2019/04/13/sp041319-boosting-growth-through-diversity-in-financial-leadership>



calls allow applicants to “gauge the prospects for a favorable OCC decision.”²³ In some circumstances, NCRC acknowledges these calls can prevent applications from being filed that are unduly risky or in which CRA performance needs to dramatically improve before the agency can contemplate an application. However, in other situations, these calls can unduly influence the agency and pre-dispose it to approving mergers.

In order to prevent abuses, the OCC has two choices. Either stop holding these pre-filing meetings or be completely transparent. All transcripts of the calls and any PowerPoints or other materials must automatically become part of the bank applications and are made publicly available during the comment period.

Conclusion

NCRC appreciates the OCC’s proposal to remove expedited decision-making on merger applications that often present complex considerations regarding convenience and needs, fair lending, anti-trust, and financial soundness factors. We support the use of more detailed application forms that provide more information to the public. In general, the proposed policy statement is a step in the right direction with more detailed questions on convenience and needs including product affordability as well as availability.

The OCC should bolster its emphasis on banks’ abilities to serve communities through partnerships with community-based organizations including the retention of the question about honoring previous commitments and encouraging banks to consider community benefit agreements as a means of serving convenience and needs. The format and outreach for public meetings and hearings needs to be improved in order to create more detailed information about the impacts of mergers. The OCC should include questions about efforts to promote diversity in the policy statement. Finally, the OCC should collaborate with the CFPB, the Federal Reserve Board, and the FDIC to further improve common approaches regarding mergers and to consider implementation of the recent DOJ and FTC merger guidelines more fully.

²³ OCC’s Licensing Manual, *Business Combinations*, January 2021, p. 27, <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/pub-lm-business-combinations.pdf>



Thank you for providing us with this opportunity to comment on this important matter. If you have any questions, you can contact me at jvantol@ncrc.org or Josh Silver, Senior Fellow, at jsilver97@gmail.com, or Kevin Hill, Senior Policy Advisor, at khill@ncrc.org.

Sincerely,

A handwritten signature in black ink that reads "Jesse Van Tol". The signature is written in a cursive, flowing style.

Jesse Van Tol
President and CEO