

ISSUE: Identify and Enforce Public Benefits Claimed by Banks in Mergers and Acquisitions and Require Specific Description of Public Benefits of Mergers

For 50 years, the law has required federal regulators to consider the public's interest when approving bank mergers and acquisitions. Both the Bank Holding Company Act and the Bank Merger Act require regulators to consider the "the convenience and needs of the community to be served."⁹ Regulators must assess if mergers provide benefits to the public beyond the gains for financial institutions through increased profits and market power.

If mergers only benefit financial companies while communities suffer through plummeting loan levels, branch closures and increased prices, then society has been made worse off, since inequality will increase, employment will decrease, and economic activity in communities will be depressed.

The only way to assess the potential public benefits of a merger is through a specific and concrete plan described in the bank's application regarding future levels of lending, investments, and services in low- and moderate-income communities. But the regulatory agencies do not regularly require submission of these plans.

Who Can Act:

The Office of the Comptroller of the Currency (OCC), the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC)

NCRC's Position:

To benefit communities, federal agencies must clarify the public benefit standard so that both the public and financial institutions can better understand this factor's importance and its requirements. After mergers, regulators must also consistently monitor and enforce banks' claimed public benefits to ensure that institutions fulfill their promises. The regulatory agencies could:

- Offer a template for banks to outline the public benefits of a proposed merger;
- Require specific descriptions with verifiable performance measures of how future CRA and fair lending performance will improve. The public must have an opportunity to comment on these public benefit plans during the merger application process.

⁹ "In every case, the responsible agency shall take into consideration...the convenience and needs of the community to be served." (12 U.S.C. § 1283(c)(5)(B)); Anti-competitive effects must be "clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served." (12 U.S.C. § 1842(c)(2)). See more at: Wilson, Mitria. *Protecting the Public's Interests: A Consumer-Focused Reassessment of the Standard for Bank Mergers and Acquisitions*, Banking Law Journal, Vol. 130, No. 4, April 2013.