April 21, 2014

Chair Janet Yellen
Federal Reserve Board of Governors
20th St. & Constitution Ave., NW
Washington, D.C. 20551

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

SENT VIA EMAIL

Open Letter to the Federal Reserve and the FDIC
21st Century Mergers: "Low Satisfactory" is "Satisfactory" to Regulators

Dear Chair Yellen and Chairman Gruenberg:

We were greatly disappointed to learn that the Fed and the FDIC approved PacWest Bancorp's (PacWest) application to purchase CapitalSource. In doing so, the agencies reinforced a dangerous message: "Low Satisfactory" is "Satisfactory" to both regulators. As one of the biggest bank deals of the year, we are concerned to see this step backwards.

In the current market, bank mergers have become less frequent. Fewer mergers give fewer opportunities to publicly hold banks accountable to their overall community investments. It is therefore urgent that financial regulators stringently hold banks accountable to their communities during Community Reinvestment Act (CRA) examinations, mergers, and acquisitions.

Thanks to our coalition members and other stakeholders, we have important insight on the impact of financial institutions' community development lending, investments, and services. Financial regulators like the Fed and the FDIC play an important role in ensuring that all large banks reinvest a reasonable portion of their proceeds back into their communities. Regulators must maintain vigilance against giving a pass to questionable CRA performance and further allowing these banks to grow in size and scope.

The PacWest and CapitalSource merger spotlights this issue: PacWest, despite its lackluster CRA record, successfully applied to merge with CapitalSource, a bank with a strong CRA performance. PacWest did so without providing adequate assurance that it would rise to the level of CapitalSource's CRA successes.

What is Satisfactory Performance to the Fed and FDIC?

On September 23rd, 2013, Comptroller of the Currency Thomas Curry stated that more was going to be expected of large, national financial institutions. We applaud his leadership and hope that this will lead to an increased commitment to diversity and community development from these institutions.

The Fed and FDIC must demonstrate similar leadership and, at minimum, issue public statements encouraging large financial institutions to do more. The recent CRA Performance Evaluations of several large banks have shown that they receive "Satisfactory" performance ratings even when showing low performance on lending, investments, and/or services.

FDIC Case Studies: Low-Satisfactory Considered Satisfactory

PacWest

PacWest is a large bank with $6.8 billion in total assets. To reach this size, the bank acquired eight institutions since 2002 and now has been approved by the Fed and FDIC to acquire CapitalSource, an institution with a strong CRA record. According to PacWest's 2010 CRA Performance Evaluation, PacWest only devoted 2.8% of its assets to community development lending and qualified investments. The Performance Evaluation also notes that PacWest's community development lending declined by 49% in dollar volume since its last Performance Evaluation. PacWest received low satisfactory on lending, investment and services, yet still received a satisfactory rating overall. Despite its lack of adequate community investment, PacWest filed an application to merge with CapitalSource.

In response to the Greenlining Institute and the California Reinvestment Coalition's (CRC's) strong opposition to PacWest's application to merge with CapitalSource, the FDIC convened a meeting with the PacWest, Greenlining, and CRC. While we appreciate the FDIC opening space for further dialogue, this limited-audience interaction can in no way substitute for public hearings. Greenlining and other advocates wrote to regulators urging them to deny the merger, especially since the public's voice had not been heard. Nonetheless, PacWest's application was approved.

Torrey Pines Bank

Torrey Pines Bank (TPB) is a large financial institution with total assets of $2 billion as of its 2013 CRA Performance Evaluation. In 2011 and 2012, 28.5 and 26.4 percent respectively of TPB's small business lending went to small businesses categorized as having gross annual revenue below $1 million. Dunn & Bradstreet data indicate that 67.6 and 72.5 percent respectively of businesses in TPB's combined assessment area (CAA) belonged to this category of business, and that 46.4 and 47.1 percent respectively of aggregate bank lending went to these types of businesses. Therefore, in 2011 and 2012, TPB extended roughly 20 percent fewer loans to small businesses than other financial institutions in its assessment area, despite the fact that around 70 percent of the businesses in its assessment area fit into that category. This is despite several community contacts citing "many opportunities available for banks to get involved in improving their communities." The FDIC gave TPB "Low Satisfactory" performance on lending, investments and services; however, it still received a "Satisfactory" rating overall.

Tri Counties Bank

Tri Counties Bank (TCB) is a large bank with $2.5 billion in total assets. Since 2010, the Bank has acquired two institutions and recently announced plans to acquire North Valley Bank. According to its 2013 CRA Performance Evaluation, TCB devoted less than 2% of its assets to community development lending and qualified investments. TCB received a "Low Satisfactory" on investments and still received an overall "Satisfactory" CRA rating.

Our Concerns

Grade Inflation is Rampant

We are concerned that the FDIC is setting the bar too low with its CRA Performance Evaluations. In addition to these case studies, according to the Federal Financial Institutions Examination Council (FFIEC) website, the FDIC has only extended three "Needs to Improve" ratings to large banks in California since 1997, and just a single "Substantial Noncompliance" to a large bank in the entire country. Though we would like to believe that this is because banks are performing well on their CRA obligations across-the-board, our coalition of community-based organizations and small businesses tell us otherwise.

Low-Satisfactory Leads to Satisfactory

Currently, banks that earn “Low Satisfactory” across the board still earn an overall “Satisfactory” grade. This automatic “rounding up” dis-incentivizes banks from striving for an “Outstanding” or even a true “Satisfactory.”

The CRA is constantly weakened as institutions receive passing ratings for minimal investment. It puts our communities at a severe disadvantage if large banks are deemed “Satisfactory” by their regulators even when they devote relatively small amounts to community development lending, investments, and services. This trend must be reversed.

Poor Community Outreach Leads to Minimal Community Input

We are concerned with the minimal level of public involvement in the merger approval process. As you know firsthand, the regulatory process is difficult to navigate, even for those working within the agency. The process entails a myriad of documents that are difficult to find and understand, complicated industry jargon, and need for familiarity with regulatory agencies. The end result is an unfortunately inaccessible public comment process.

Not only do we recommend simplifying this process, we know that written submission of comments is an insufficient method of reaching most communities. In addition to written comments, public hearings should be standard for all bank merger activity that will affect local communities.

In its approval order, the Fed expressed that comments on the PacWest application to merge did not adequately “demonstrate why […] written comments do not present the commenters’ views adequately or why a hearing otherwise would be necessary or appropriate” (FRB Order No. 2014-3, p. 21). This surprised us, given that hearings are the most inclusive and appropriate way to receive public input from the community. What would need to be shown to demonstrate that public hearings are more accessible than the convoluted written comment system? If the burden is on community to present the evidence, regulators must be transparent about what they expect to see.

Already, we are seeing more and more innovations that indicate the current system is insufficient to effectively promote public participation. Regulationroom.org, for example, was recently established to facilitate communication between the public and the Department of Transportation and the Consumer Financial Protection Bureau. In another instance, the Environmental Protection Agency took a fresh look at its efforts to involve the public and concluded that its public engagement efforts should include tools like roundtables, constituency meetings, and information gathering sessions.

Our Requests

Although we are disappointed by this approval, we remain optimistic that this can still lead to positive change that uplifts community input and transparency. Specifically, we request that the Fed and FDIC:

1. ***Share agency rubrics for scoring institutions to help us better understand the analysis performed by examiners.*** Currently, CRA exams vary widely depending on the examiner and the regulating agency.

2. ***Hold public hearings for mergers to improve the comment process’ accessibility to the general public.*** The comment process is generally limited to in-the-know advocates, rather than the community members who will be immediately affected by the bank’s activity.

3. ***Demonstrate Chair Yellen’s and Chairman Gruenberg’s leadership by issuing statements that reinforce their commitment to holding banks to a higher standard.*** Currently, a regulator who has shown leadership on this front is Comptroller Thomas Curry. It is crucial that our public officials adopt

a strong and unified stance that lets the financial services industry know that they are expected to conform to heightened expectations.

4. ***Broadly construe the mandate to determine whether a merger will produce benefits to the public.*** This includes factoring in a financial institution's supplier diversity efforts as well as whether it has a suitable record of charitable contributions.

Thank you for working with us to keep the CRA relevant. At its best, the CRA makes sure that hard-earned dollars are reinvested in the communities that have the greatest need and the greatest potential.

Should you have any questions or comments about this letter, please do not hesitate to contact Aysha Pamukcu, Economic Equity Policy Counsel, at ayshap@greenlining.org.

Sincerely,

Orson Aguilar	Sasha Werblin
Executive Director	Economic Equity Director

cc: Comptroller Thomas Curry, Office of the Comptroller of the Currency
Governor Daniel Tarullo, Federal Reserve Board of Governors
Mark Pearce, Director, Division of Depositor and Consumer Protection Federal Deposit Insurance Corporation
Robert Mooney, Deputy Director, Division of Supervision and Consumer Protection for FDIC
Ana Alvarez-Boyd, Senior Associate Director, Division of Consumer and Community Affairs, Federal Reserve Board of Governors
The Greenlining Coalition
California Reinvestment Coalition
National Community Reinvestment Coalition