



November 17, 2021

Jerome Powell, Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, D.C. 20551
Via email: MA@mpls.frb.org

Michael Hsu, Acting Comptroller
Office of the Comptroller of the Currency
400 7th St SW,
Washington, DC 20219
Via email: Largebanks@occ.treas.gov

Re: EBHO and *California community groups oppose the applications by U.S. Bancorp and U.S. Bank to acquire MUFG Union Bank, N.A., San Francisco, California, a direct wholly-owned national bank subsidiary of MUFG Americas Holdings Corporation, call for public hearings and extension of the comment period.*

Dear Chairman Powell and Acting Comptroller Hsu,

In light of the substantial impact that this proposed merger will have on California communities without a significant commitment to California communities, East Bay Housing Organizations (EBHO) at this time opposes the applications by U.S. Bancorp and U.S. Bank to acquire MUFG Union Bank, N.A., San Francisco, California, a direct wholly-owned national bank subsidiary of MUFG Americas Holdings Corporation.

Founded in 1984, EBHO is a member-driven organization working to preserve, protect, and create affordable housing opportunities for low-income communities in the East Bay by educating, advocating, organizing, and building coalitions.

We have partnered successfully with both U.S. Bank and MUFG Union Bank in the past, and are hopeful for continued dialogue. A number of our members are affordable housing developers and we have concern that without a Community Benefits Agreement, this merger may lessen competition for lending on affordable housing projects and decrease philanthropic and equity investment. We are mostly concerned about the tight timeline and process – more hearings and discussion is necessary to allow the banks to address these community concerns, and plan increased, rather than decreased, investment in low- and moderate-income communities.

We call for public hearings on the merger to be held in Los Angeles, San Francisco, and Fresno. We further urge the regulators to extend the comment period through the end of the public hearings or through the end of calendar year, whichever comes later, to ensure that all impacted communities have a meaningful opportunity to provide comments to inform your deliberations.



Public Benefit Standard

One of the key mandates of the Federal Reserve System is to promote the public interest.

The Bank Holding Company Act and the Bank Merger Act prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served. Probable effect is referring to the impact on the bank(s) ability to meet the convenience and credit needs of communities.¹

The Bank Merger Act and the Bank Holding Company Act, direct the federal banking agencies to consider four main factors including evaluating a proposed merger for the transaction's probable effect on the public interest. The statutes authorize the agencies to reject a merger proposal if any one of these factors weighs against approval.²

In the case of the US Bank proposed acquisition of Union Bank, and the loss of Union Bank and its CRA activity, it is clear that currently the merger as proposed will have a negative impact on the bank's ability to meet the credit needs of the community it serves.

The Federal Reserve is also required to consult with the Department of Justice on this merger's impacts and potential anti-competitive effects on low income communities and communities of color. We request that the analysis and screen of this acquisition by the Federal Reserve and Department of Justice be made available to the public prior to public hearings so that the public can comment and weigh in on the analysis.

Comment Period

The regulatory deadline for comment is too short. While California community groups are beginning constructive dialogue with U.S. Bank regarding a Community Benefits Agreement (CBA) that addresses community credit needs in California to ensure that any combined bank increases reinvestment activity beyond that of both banks by 50%, there has not been sufficient time to make meaningful progress. As the Federal Reserve Board deadline for comment arrives, we are compelled to file these comments. We urge the regulators to revise bank application and CRA rules to allow for longer comment periods, which will facilitate more constructive dialogue between community groups and financial institutions.

We thank U.S. Bank for beginning such discussions, and for making its CEO and key staff available to listen to over 40 California nonprofit organizations describe community credit needs and concerns. We also thank the Bank for reviewing and considering the letter dated November 8, 2021, signed by over 50 California community groups, urging the Bank to finalize strong commitments to our communities. We urge continued, productive dialogue and negotiations for a Community Benefits Agreement (CBA) with the Bank for the good of California communities.

Community Benefits Agreement

Looking at past performance and prospective activity, we do have serious community reinvestment, consumer, and anti-competitive concerns relating to the proposed merger. A strong CBA is needed to

¹see 12 U.S.C. § 1842(c); 12 U.S.C. § 1828(c).

² <https://corpgov.law.harvard.edu/2019/09/17/modernizing-bank-merger-review/>



ensure any pro forma bank will: keep open all branches in LMI neighborhoods and neighborhoods of color in our state; extend mortgages to all qualified borrowers and communities; support the many very small, women and BIPOC-owned small businesses serving our communities; retain all front line and reinvestment staff currently employed by both banks; offer lower-priced consumer loans to bank customers; end overdraft fees; support the broadband needs of California's diverse communities; and maintain appropriate Information Technology and operational risk controls, amongst other concerns. A strong commitment on these fronts is necessary to prevent public harm and ensure public benefit as required by law.

California community groups are concerned that the loss of Union Bank, a large and impactful stakeholder in housing and community development efforts, will have an outsized impact on our state. Many groups have had strong relationships with Union Bank's community reinvestment and community development staff and are concerned that these relationships will be lost. Additionally, both banks have been active in helping to meet the state's critical affordable housing challenges. A combined bank will likely have less appetite for low income housing tax credit investments, and nonprofit affordable housing developers will see fewer bids at less competitive pricing for their projects, which could have severe and devastating impacts on our LMI communities.

In fact, the White House recently issued a statement noting "Excessive consolidation raises costs for consumers, restricts credit for small businesses, and harms low-income communities."³

Jobs

In addition, the OCC must consider not only the impact on consumers, but also how consolidation under US Bank would impact communities through elimination and degradation of frontline bank worker jobs. These roles sustain local communities, determine customer satisfaction, and ensure bank health by connecting branches to the economies they serve.

Home Lending in California

US Bank falls below the industry standards on multiple categories of mortgage lending, including lending to Black, Latine, Native American, and low-income borrowers. In fact, U.S. Bank's lending to low and moderate income borrowers is nearly half that of the industry as a whole. US Bank is also below its peers in applications and originations to low and moderate income census tracts. In addition, US Bank falls below the industry standard for FHA loans which can be an entry point to homeownership for borrowers who may not qualify for conventional financing. This is of concern to communities given the housing challenges in California and the competition in the market.

More specifically, in originations to Black borrowers as a percentage of all originations, US Bank is lending at half the rate of its peers (1.5% for US Bank compared to 2.9% for peers). For Latine borrowers, US Bank is at 10.6% of loans, compared to 16.9% for its peers. The only area where U.S. Bank exceeds its peers in originations is to Asian borrowers, where US Bank is at 20.4% while its peers are at 15.6%. We encourage the regulators to analyze disaggregate lending to Asian borrowers to ensure there aren't disparities amongst different groups.

³<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>



We are particularly concerned that US Bank is also below its peers in originations in majority BIPOC census tracts. Most glaring is its originations in 80-100% majority BIPOC census tracts where it falls at 11.4% of originations, while its peers are at 16.5%.

We are concerned that many of these mortgage lending disparities are statistically significant and impact applications/outreach, denials, originations, and pricing decisions impacting BIPOC borrowers and neighborhoods. We urge the Bank and the regulators to investigate these disparities to ensure compliance with fair housing laws.

Union Bank performs much better in nearly all areas of home mortgage lending. It is concerning to think that a bank like US Bank would absorb a better performing bank into its lending culture that is rife with disparities.

Public Hearings

We urge regulators to hold public hearings in Los Angeles, San Francisco, and Fresno, extend the comment period until the end of such hearings, and reject this merger proposal unless U.S. Bank commits to a strong Community Benefits Agreement that is negotiated with community groups and which has mechanisms in place to ensure compliance.

We submit as an attachment, a proposed CBA that has been submitted to the Bank.

Without a strong Community Benefits Agreement, we believe that the bank applicants have not demonstrated that they have sufficiently met community credit needs, that they will meet the convenience and needs of communities going forward, or that this merger will provide a public benefit.

If you have any questions about this letter, or would like to discuss the matter further, please contact Gloria Bruce at gloria@ebho.org or 510-663-3830 ext. 322.

Thank you for your consideration of our views.

Sincerely,

Gloria Bruce,
Executive Director, East Bay Housing Organizations (EBHO)

cc: Paulina Gonzalez-Brito, Executive Director, California Reinvestment Coalition
Maxine Waters, Chair, HFSC
Sherrod Brown, Chair, Senate Banking Committee
Jesse Van Tol, CEO, National Community Reinvestment Coalition



Attachment:

**CRC's Draft Proposal on California Commitment
to US Bank/Union Bank**

Overall commitment:

Beginning in 2022 and extending over the next 5 years, US Bank pledges to increase its overall qualified CRA lending, investment, charitable contribution, supplier diversity, and related activities as described below, to achieve a minimum of \$90 billion in cumulative qualified CRA activity in California as defined below during this 5-year period.

To achieve this cumulative commitment, we have identified the following aspirational goals for each of the key components of the CRA qualified activity. Over the term of the commitment, the goal is to achieve the following:

Homeownership:

- Annually increase mortgage originations for each of the following:
 - Mortgage lending to LMI borrowers;
 - Mortgage lending to African American borrowers;
 - Mortgage lending to Latine borrowers;
 - Increase lending to each Latine disaggregated group.
 - Mortgage lending to Asian American Pacific Islander borrowers;
 - Increase lending to each AAPI disaggregated group.
 - Mortgage lending to Native American borrowers;
 - Mortgage lending in LMI census tracts; and
 - Mortgage lending in majority-minority census tracts.
- Continue Union Banks down payment assistance of \$6,000-\$9,000 and increase down payment assistance to BIPOC borrowers by 10% each year for 5 years. The increase should be across all race/ethnicity groups.
- Continue to offer Union banks FHA and HomeReady loans to meet local community credit needs.
 - Commit that all borrowers are offered the Best Priced Product for which they qualify - no steering to FHA or other higher cost products.
- US Bank will have a mortgage product that is accessible to Individual Tax Identification Number (ITIN) borrowers. Union Bank currently accepts ITIN borrowers and US Bank should adopt this policy.
- Work with CRC to develop a Special Purpose Credit Program (SPCP) mortgage product to target underserved BIPOC home buyers in California and commit \$100 million for such loans.
- Provide \$7.5 million in grants over the course of the Plan to nonprofit organizations and ethnic media that will assist the bank in reaching additional LMI and diverse homeowner and prospective home buyer clients. Grants will be awarded through an open and transparent process. These marketing dollars shall be separate from the Bank's philanthropy budget.
- Keep loan origination and regional representatives in all markets currently served by Union Bank. Increase loan officer staffing by 1 FTE per year for the Plan period focused on LMI and majority-



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minority census tracts. The Bank will consider diversity and experience working in underserved communities when making hiring decisions.

- \$20 million over five years in philanthropic allocations to housing counseling organizations, legal aid offices and fair housing organizations, and get this money out as quickly as possible, especially for organizations serving BIPOC that are being hit the hardest by the pandemic. This support will help grow the pipeline of mortgage-ready, first-time homebuyers through pre- and post-purchase homebuyer education, credit rehabilitation counseling, and will serve as the first line of defense to keep homeowners in their homes when faced with foreclosure.
- Provide \$5 Million in grant support for homelessness prevention and support services, including mental health services. This support will be prioritized to organizations led by African Americans in order to address the disproportionate impact homelessness has on African Americans.
- Be part of the solution in objecting to pressure low-income homebuyers are under to waive appraisal and inspection contingencies, which can have devastating consequences for homebuyers. Fund nonprofit housing counselors who can advise clients against this, and be a voice for ethical industry practices.
- Offer forbearance for up to a year for all mortgage borrowers, regardless of whether the loan is federally backed. Provide reasonable repayment plans and loan modifications post forbearance.
- Freeze foreclosures due to “no contact,” and commit to connect the homeowner with a nonprofit housing counseling organization, confirm that the nonprofit has made contact with the homeowner, and consider the homeowner for all available loss mitigation options before resuming foreclosure proceedings.
- Non-profit organizations, including Community Land Trusts, should have right of first refusal on Bank REO properties (single family and multi-family properties).

Policy:

- Sign CRC’s Anti Displacement Code of Conduct, review all programs, products and policies to ensure compliance with the Code, and report on such efforts.
- Support CFPB’s section 1071 data collection rulemaking efforts so that detailed data on small business lending is collected and made publicly available in order to promote equal access to credit and to support enforcement efforts against discrimination and fair lending violations. Commit to work with community groups to establish new small business lending goals by race, ethnicity and gender when the data is public.
- Develop Green initiatives and screens. The Bank shall review its investment portfolio with a green screen, and work to ensure its community development efforts promote a green economy and green communities that build wealth in communities of color.

Small Business Lending - \$37.5 billion in small business lending.

Annually increase small business lending for each of the following

- LMI borrowers;
- African American borrowers;
- Latine borrowers;
 - Increase lending to each Latine disaggregated group.
- Asian American Pacific Islander borrowers;



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- Increase lending to each AAPI disaggregated group.
- Native American borrowers;
- LMI census tracts;
- Majority-minority census tracts.
- The Bank will also achieve 50% of its number of small business loans each year originated in loan amounts under \$150,000, as well as achieve 50% of small business lending each year to businesses with under \$500,000 in revenue, and increase originations in these two areas, year over year.
- Lend to small business owners that do not have a social security number and use ITIN.
- Develop a line of credit product for smaller businesses, in partnership with a minimum of 5 CDFI partners, with a focus on CDFIs led by people of color.
- In support of Bank efforts to increase access to credit for smaller businesses (for businesses with <\$500,000 in revenue) and to increase lending to diverse businesses in our California communities, the Bank commits to the following:
 - CRA-qualified charitable contributions will be “unrestricted” for organizations to use as they see fit.
 - Support small business technical assistance provided by nonprofit providers and commit to allocate \$2 Million annually for technical assistance and \$750,000 annually for loan loss reserve funding, with emphasis on SBA micro lenders doing loans less than or equal to \$50,000. The bank will develop a plan for a formalized selection and implementation process for its technical assistance and loan loss reserve program with community input.
 - Formalize a process to refer a minimum of 30% of small business loan denials to local Technical Assistance providers, CDFI’s and other community development lenders in our assessment areas. Prioritize BIPOC led TA providers, CDFIs and other community development lenders and expand referral program beyond one partner...
 - Actively participate in the California state-guarantee loan program.
 - Develop an SBA product offering and become a Preferred SBA lender. Commit to increasing overall SBA lending each year. Of the total commitment for SBA lending, 50% each year shall be to underserved communities and low and-moderate-income census tracts. Additionally, 50% of SBA lending annually shall be in loan amounts of \$150,000 or less, and the number of loans of such lending shall increase each year.
 - Work with CRC to develop a Special Purpose Credit Program (SPCP) product for small businesses that are owned by registered members of state or federally recognized First Nation tribes and commit \$100 Million for this program.
 - The Bank will provide \$7.5 Million in grants over the course of the Plan to nonprofit and ethnic media organizations that will assist the bank in reaching additional LMI and BIPOC small business customers. This grant will be awarded through an open and transparent process. These marketing dollars shall be separate from the Bank’s philanthropy budget.
 - Set aside \$20 million to provide direct grants to small business owners suffering from pandemic related impacts.
 - US Bank will develop a Special Purpose Credit Program for commercial down payment assistance targeted at BIPOC and commit \$100 Million to this program



- The bank will donate all of its proceeds from PPP loans to grants to small businesses with less than \$1 million in revenue or to CDFIs and other community lenders led by and serving BIPOC. These PPP dollars will be separate from the bank's philanthropy budget.

Community Development: Commit to \$15 billion in CD lending and \$5 billion in CD investments

- At least 70% of lending and investment in affordable housing should be targeted to deed restricted affordable rental housing for persons experiencing homelessness, extremely low-income households, and very low-income households.
- Create a \$50 million investment fund to build the capacity of affordable housing developers of color and to finance housing projects sponsored by such developers that are targeted to neighborhoods and residents of color.
- Establish an annual pool of \$250 million for Community Development Financial Institution, Community Development Corporation lending, including faith based lenders, and other non-profit community development funds led by people of color and with assets less than \$2 million to include EQ2 financing, initiated through formal broad based "request for proposal" (RFP) processes.
- Develop a product designed to help Community Land Trusts and similar entities purchase, acquire and/or rehab properties in California to ensure permanent affordability of housing.
- Support regional and local efforts to bring high speed internet/broadband to underserved communities and residents through:
 - financing infrastructure to expand access to communities that lack such access.
 - devoting bank staff time, expertise and networks through the use of community service hours for participation in regional and local collaboratives;
 - funding planning grants for local communities
 - providing appropriate devices to community residents.
 - funding digital literacy training so residents can take advantage of access to high-speed internet/broadband services.
 - The bank will commit \$50 million to these efforts.
- Commit \$50 million for investments (\$47 million) and capacity building grants (\$3 million) to support nonprofit, community land trust and community efforts to acquire and preserve distressed assets, consistent with recently passed legislation (SB 1079-Skinner), which encourage the purchase of distressed properties with up to 25 units by nonprofits, community land trusts, and tenant occupants.
- Invest annually in CRA-qualified small business investment companies (SBIC's), with 20% targeted for minority enterprises.
- Prioritize infill and small site development.
- Help nonprofits purchase, refinance and green their buildings.
- Dedicate investment dollars to green community development initiatives led by people of color and located in communities of color.
- Low Income Housing Tax Credits each year should be no less than the aggregate between US Bank and Union Bank at the time of the merger application, and should increase by 30% each year over 5 years. This annual increase in LIHTC investments is meant to acknowledge the unique impact of this merger on California communities.



- The bank will offer an EQ2 product and dedicate \$100 Million each year to EQ2 investments.

Consumer:

The Bank agrees to:

- Continue to offer, actively market and service an account that serves the banking needs of the unbanked, underbanked, and low-to-moderate income communities within its assessment areas within one year from the date of this commitment. This will be done in accordance with the Model Safe Account guidelines developed by the FDIC and will include a savings, checking, and cash-secured credit card feature. The bank shall not use Chexsystems screening on these accounts and will not report to Chexsystems on these accounts. The Bank will accept ITINs and a Matricula Card in lieu of a SSN for financial products.
- Commit to reconfigure all ATMs to waive out-of-network surcharges for California public assistance recipients who use Electronic Benefits Transfer Cards (EBT).
- Establish a checking and savings account for young people under 22. The bank will not use Chexsystems for this account, and will not require parent/guardian permission to open. This account will meet the standards agreed to above on affordable accounts.
- Establish an age friendly bank account that is also accessible to survivors of domestic violence.
- Consider in good faith whether to participate in any state designed product to make bank accounts accessible to California's unbanked and underbanked communities. AB 1177 (Santiago), currently provides one such vehicle.
- Commit to opening 5 new branches in LMI neighborhoods of color.
- The bank will not close ANY branches in LMI neighborhoods or neighborhoods of color.
- US Bank will adopt Union Bank's APR for personal consumer loans and develop this or other products as meaningful low cost alternatives to payday loans.

Charitable Donations - Increasing charitable contributions to 1.5 times past performance

- Begin to track CRA eligible philanthropic support to organizations led by BIPOC and
 - Commit to increasing the amount of support for these organizations year over year.
 - Support capacity-building efforts for non-profit organizations led by BIPOC.
 - Offer general operating grants to these organizations, with a priority on increasing this support for organizations led by BIPOC.
- Support capacity-building grants for faith-based organizations engaged in community development and advocacy efforts.
- Commit that at least 70% of the Bank's contributions will be for housing, economic development, financial capability, fair housing, and legal services.
- US Bank contributions for 2022 shall be \$42.6 Million (1.5x 2020 contributions), and should increase by 20% each year. This annual increase in contributions is meant to acknowledge the unique impact of this merger on California communities.



Board Diversity:

- The Bank will have at least 50 percent of its leadership composed of individuals from underrepresented groups (comprised of persons of color or women) and see an increase in underrepresented executives in leadership roles over the next 5 years.
- The Bank will make its management demographic data publicly available.

Racial Equity Audit:

US Bank will work with community partners to choose a third party evaluator to conduct a racial equity audit of the bank's investments, lending, philanthropy, and policies, and make recommendations on how to improve the bank's racial equity impact.

Supplier Diversity:

US Bank commits to increase its spending with diverse suppliers by 20% of the combined US Bank and MUFG benchmark levels, while increasing the number of BIPOC suppliers the bank works with over the plan's period. Bank shall retain supplier diversity personnel in California to preserve, grow its spend and relationships with diverse firms located in California. US Bank will report on supplier diversity goals and spend with California firms by category annually and meet with the community representatives to discuss the results and action plans to address any underperformance.

Enforcement:

- The Bank will commit to meeting annually with CRC and Greenlining and share data showing compliance to CBA commitments. The CEO of the Bank will attend the annual meeting.
- US Bank will include this CRA plan in its application to the regulators.
- US bank commits to making the plan public and making it available on its website.
- US Bank commits that before the 5 year period is up, it will negotiate a new plan with CRC and other community partners.

Market Representation & Community Development Personnel

- Bank will retain the combined total # of CRA and Community Development staff members representing California so that all regions of California are represented by no less than the existing combined # of individuals across the Sacramento Northern CA, Central Valley, Southern CA, Inland Empire and San Diego regions of the state, This representation is important to ensuring US Bank is able to maintain strong and beneficial partnerships with stakeholders in each local region.