Hon. Jerome Powell, Chairman, Federal Reserve Board of Governors
Hon. Jelena McWilliams, Chairwoman, Federal Deposit Insurance Corporation
Hon. Rodney Hood, Chairman, National Credit Union Administration
Mr. Brian Brooks, Acting Comptroller, Office of the Comptroller of the Currency
Hon. Kevin Hagler, Chairman, Conference of State Banking Supervisors
Hon. Tim Fox, President, National Association of Attorneys General
Hon. Makan Delrahim, Assistant Attorney General, US Department of Justice

**Before the**
**DEPARTMENT OF JUSTICE**
**Antitrust Division**
**Washington, D.C. 20530**

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| Banking Guidelines Review | ) |
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**COMMENT OF**
**FTC COMMISSIONER ROHIT CHOPRA[*]**
**AND PROFESSOR JEREMY C. KRESS[†]**

We write to urge the Department of Justice (DOJ) and the federal banking agencies to strengthen the Bank Merger Competitive Review Guidelines (the Bank Merger Guidelines) and avoid reforms that would further increase concentration in the financial sector. To date, the Bank Merger Guidelines have failed to protect consumers, businesses, and the broader financial system from the harmful effects of bank consolidation.

We make four points in this comment. First, the DOJ's lax oversight of bank mergers has harmed small businesses and consumers, especially in low- and moderate-income (LMI) communities. Second, the DOJ's current approach ignores many of the non-price harms that stem from bank mergers, including increased systemic risks, expansion of "too big to fail" subsidies, exacerbated conflicts of interest, and reductions in key measures of product quality, such as consumer privacy. Third, the DOJ should strengthen its review standards rather than adopt approaches that would make bank merger review even less rigorous. Finally, to preserve consistency in bank merger oversight, the DOJ should work jointly with the federal banking agencies in reviewing the interagency Bank Merger Guidelines.

## 1. DOJ's Lax Merger Oversight Harms Consumers and Small Businesses by Increasing Prices and Restricting Credit

Based on traditional measures of competitiveness, the Bank Merger Guidelines have failed to protect U.S. consumers and businesses from the negative consequences of bank consolidation.

[*] This comment represents Commissioner Chopra's own views and does not necessarily reflect those of the Federal Trade Commission or any other Commissioner.

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Bank mergers have increased the cost and reduced the availability of credit,[1] inflated the fees that banks charge for basic financial services,[2] and depressed the interest rates that banks pay to their accountholders.[3] Moreover, these direct consequences of bank consolidation have led to several disturbing knock-on effects, including wider income inequality in areas affected by bank mergers and less small business formation. The current Bank Merger Guidelines, in sum, are woefully inadequate to protect consumers and the broader economy.

Critically, the negative effects of bank consolidation have been especially severe for LMI communities, which have borne the brunt of the DOJ's laissez-faire approach. In the aftermath of bank consolidation, already-underserved LMI neighborhoods have even fewer options for obtaining basic financial services. Thus, high-fee check-cashing companies and other predatory financial service providers have proliferated in LMI areas affected by bank consolidation.[4] The detrimental consequences for LMI neighborhoods are particularly pronounced when an acquiring bank is from out-of-state, since the acquirer is not rooted in the local community.[5] As a result of this disconnect, households in LMI neighborhoods have been more likely to experience evictions and have debts sent to collection agencies following bank mergers.[6] Due to the ensuing economic hardships, bank consolidation has even been associated with increases in burglary and other property crimes, with the largest effects in LMI areas.[7]

Small businesses also suffer because of the DOJ's inadequate oversight of bank mergers. According to numerous empirical studies, bank mergers have led to a decline in small business credit availability.[8] For small businesses that have been able to obtain loans after a merger, credit has become more expensive and average loan size has shrunk.[9] As a result, fewer entrepreneurs have started small businesses following bank consolidation.[10] This reduction in small business

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[1] *See, e.g.*, Mark J. Garmaise & Tobias J. Moskowitz, *Bank Mergers and Crime: The Real and Social Effects of Credit Market Competition*, 61 J. FIN. 495, 509-14 (2006).

[2] *See, e.g.*, Vitaly M. Bord, Bank Consolidation and Financial Inclusion: The Adverse Effects of Bank Mergers on Depositors 6-9 (Dec. 1, 2018).

[3] *See* Robin A. Prager & Timothy H. Hannan, *Do Substantial Horizontal Mergers Generate Significant Price Effects? Evidence from the Banking Industry*, 46 J. INDUS. ECON. 433, 442-449 (1998).

[4] *See* Bord, *supra* note 2, at 23-25.

[5] *See* GARY A. DYMSKI, THE BANK MERGER WAVE: THE SOCIAL AND ECONOMIC CONSEQUENCES OF FINANCIAL CONSOLIDATION 249-50 (1999).

[6] *See* Bord, *supra* note 2, at 30-32.

[7] *See* Garmaise & Moskowitz, *supra* note 1, at 518-23.

[8] *See, e.g.*, Allen N. Berger et al., *The Effects of Bank Mergers and Acquisitions on Small Business Lending*, 50 J. FIN. ECON. 187, 217, 222 (1998); Steven G. Craig & Pauline Hardee, *The Impact of Bank Consolidation on Small Business Credit Availability*, 31 J. BANKING & FIN. 1237, 1248-58 (2007); Paola Sapienza, *The Effects of Banking Mergers on Loan Contracts*, 68 J. FIN. 329, 364 (2002). The detrimental effects on small business lending are particularly severe when a community bank merges with a nonlocal acquirer. *See* Julapa Jagtiani & Raman Quinn Maingi, *How Important Are Local Community Banks to Small Business Lending? Evidence from Mergers and Acquisitions* 18-20 (Fed. Res. Bank of Phila., Working Paper No. 18-18), https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2018/wp18-18.pdf.

[9] *See* Garmaise & Moskowitz, *supra* note 1, at 515; Sapienza, *supra* note 8, at 354.

[10] *See*

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mortar branches.[22] Bank mergers, however, have led to widespread branch closures, inconveniencing customers who previously benefitted from proximity to bank offices.[23] Troublingly, branch closures following bank mergers are typically concentrated in LMI areas, further disadvantaging vulnerable populations.[24] To date, though, the DOJ has failed to consider reductions in branch access in its bank merger analysis.

The DOJ's existing bank merger review framework has likewise ignored harms (erge3165.3advs ein br (n

financial service providers are not licensed as banks, do not offer a full range of financial products, and are hampered by regulatory uncertainty that clouds their competitive future.[32]

The COVID-19 pandemic and ensuing growth of the country's largest banks have underscored traditional banks' dominant role in the U.S. financial sector.[33] The pandemic has likewise reinforced the unique role of small, locally based banks in responding to the economic needs of their community. Indeed, small, local banks have far surpassed larger and online-only banks in providing emergency relief to small businesses in their communities through the Paycheck Protection Program and Main Street Lending Program.[34] Accordingly, it would be inappropriate for the DOJ to accord greater weight to nontraditional financial services providers.

Any reforms to the Bank Merger Guidelines should be designed to strengthen the DOJ's bank merger review standards and mitigate competitive harms. Any effort to weaken the Bank Merger Guidelines would almost certainly facilitate more bank consolidation and economic harm.

**4. The DOJ Should Work Jointly with the Federal Banking Agencies in Reviewing the Interagency Bank Merger Guidelines**

Finally, if the DOJ proceeds with its review of the interagency Bank Merger Guidelines, we strongly encourage the DOJ to work closely with the federal banking agencies. The DOJ's request for comment does not indicate that it has coordinated, or intends to coordinate, with the federal banking agencies in its review. Revising the Guidelines unilaterally, however, would be a grave mistake. Since the adoption of the interagency Bank Merger Guidelines in 1995, the DOJ and the federal banking agencies have worked closely on bank merger reviews. The banking agencies offer unique perspective on the competitive effects of bank mergers, as the Bank Merger Act and Bank Holding Company Act charge them with balancing the anticompetitive effects of a proposal against the "convenience and needs of the community to be served."[35] Any review of the Bank
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