UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Chair

February 15, 2022

The Honorable Jonathan Kanter
Assistant Attorney General
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

RE: Antirust Division's Review of the 1995 Bank Merger Competitive Review Guidelines

Dear AAG Kanter:

I commend the Antitrust Division for its timely inquiry into whether and how the Division should revise the 1995 Bank Merger Competitive Review Guidelines.

In this comment, I identify how banking consolidation can reduce competition in the market for lending to new and small businesses while also reducing consumer access to services. As it considers whether to update the guidelines, I encourage the Division to consider how bank mergers may affect business dynamism and local communities.

I look forward to monitoring this proceeding carefully.

Respectfully submitted,

Lina M. Khan
Chair, Federal Trade Commission

Before the
UNITED STATES DEPARTMENT OF JUSTICE
Washington, D.C. 20530

Request for Comment Regarding the 1995 Bank Merger Competitive Review Guidelines	)))))))))

Comment of Federal Trade Commission Chair Lina M. Khan[1]

I commend the Antitrust Division's initiative to consider whether and how to revise the 1995 Bank Merger Competitive Review Guidelines. I support the goals outlined by the Division as part of this effort: ensuring that these guidelines reflect current market realities and empirical learning, ensuring that Americans face choice among financial institutions, and safeguarding against the concentration of market power.[2]

Lawmakers have long recognized that mergers in sectors that play an especially critical role in the economy—like banking—warrant particular scrut(a)-1.6Cny KT-4.6 ((a)-1.6Cnnbl)-4.62K-4.6 (up-4.6 (iba)9.2 (-1.6 (nd)1

Research shows that local banks are a particularly important sources of financing for small businesses.[15] Small banks engage in different lending behavior from large banks, focusing more on individualized analysis of small businesses than on large companies with well-established credit records.[16] Local banks' competitive advantage in collecting "soft" information leads to higher approval rates for small business loan applications.[17] Smaller banks also provide better service to small businesses, resulting in higher satisfaction rates from their customers.[18] Small banks are more likely to be located in rural areas, providing more convenient service to certain businesses in underserved communities.[19] The types of loans these banks make available and accessible to small businesses has been shown to have a significant impact on small business employment growth and small business entry, promoting new business formation and making our economy more dynamic.[20] And by concentrating on small business lending, local banks reinvest in their local communities, rather than shifting fees and lending generated from local deposits to other regions.

Because small and local banks are so important to small businesses and new business formation, competition in the market to serve those businesses can be reduced when a merger changes the mix of small and large banks in a community. Studies have shown that bank mergers have reduced small business credit availability[21] and the size of loans, while increasing the cost of credit.[22] Less credit, smaller loans, and higher costs are strong indicators of reduced competition.

These effects ripple throughout a community. As bank mergers reduce financing to local businesses, fewer such businesses form, harming business dynamism.[23] With fewer businesses forming, bank mergers are associated with decreased construction and lower local property prices.[24]

mergers may also be associated with depressed median income, increased unemployment, and greater income inequality.[26]

2. Bank consolidation can reduce consumer access to services.

As banks have consolidated, merged entities have commonly closed branches.[27] Closing a branch reduces competition for banking services in the affected communities.[28] This is particularly true because many consumers strongly prefer banks with locations convenient for them.[29] It is also concerning that post-merger branch closures tend to be concentrated in low and moderate income communities,[30] leaving more vulnerable consumers to face less competitive markets for their financial needs.

This loss of banking competition in local communities can reshape the lives of the people who live there. In low- and moderate-income communities affected by bank consolidation, high-fee check-cashing companies have proliferated[31]—a stark example of consumers turning to a much more costly alternative to a local bank branch. Research has suggested that given the impact of bank mergers on small businesses and associated employment opportunities, households in such communities are more likely to face eviction and have debts sent to collection agencies.[32]

3. The guidelines should be sensitive to how a merger may affect business dynamism and competition to serve small businesses and local communities.

The guidelines should carefully scrutinize how proposed bank mergers will affect competition to serve the financing needs of new and small businesses and local communities. The observed effects on both credit availability and pricing suggest that the current guidelines may understate the competitive effects of bank mergers on these groups of customers and on business dynamism. Accordingly, the following should be considered in updating the guidelines:

a. Small and local banks are particularly strong competitors in serving new and small businesses,

c. Deposit-based HHI calculations may not capture variations in lending behavior toward small businesses, so alternative screens that focus on the small business market should be considered.

d. Some consumers strongly prefer local branches, and the loss of competition in local communities from potential branch closures should be considered.

e. Deposit-based HHI screens at the current thresholds appear to have permitted consolidation that reduced competition in consumer banking. Accordingly, adjustments to those thresholds should be considered to strengthen enforcement.

I commend the DOJ for continuing to evaluate this topic. As a universal input, banking is a critical sector, where declining competitiotheoanthi4anto fhoprve1.3 ( )11.6 (om)-y. G3 (i5)10.9 (i)-4.69 (a)-1.r