POLICY BRIEF

AMERICAN ECONOMIC LIBERTIES PROJECT

# Revitalizing Bank Merger Enforcement to Restore Competition and Fairness in Banking

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**June 2023**

In February 2019, U.S. bank BB&T announced it would buy rival SunTrust. The $66 billion deal would create the sixth-largest U.S. bank and was the biggest bank tie-up announced since the 2008 financial crisis.[1] SunTrust and BB&T, enormous "super-regional" banks in their own right, argued they were trying to bulk up to compete with the "real" giants – Wall Street titans like J.P. Morgan Chase and Bank of America – and that, if regulators approved the deal, it would set off a chain reaction of other big bank mergers and spark a new wave of consolidation in the U.S. financial system.

After the Fed approved the deal, the resulting bank, renamed Truist, shuttered more than 820 branches across the country, nearly a third of the merged firm's locations.[2] The bank slashed thousands of jobs, ultimately cutting 14% of its workforce.[3] Customers complained of service problems on the news, highlighting difficulty accessing accounts and making transactions. One summed it up, saying, "You can't get through. There's nobody to answer questions. There's nobody to take responsibility," adding, "There's nobody to talk to."[4]

1 Aparajita Saxena et al., "BB&T to buy SunTrust in biggest U.S. bank deal in a decade," Reuters, Feb. 7, 2019, https://www.reuters.com/article/us-suntrust-banks-m-a-bb-and-t-idUSKCN1PW156.

2 Richard Craver, "Truist surpasses goal of closing 800 branches. Workforce down 14% since bank debuted.," Winston-Salem Journal, April 19, 2022, https://journalnow.com/business/local/truist-surpasses-goal-of-closing-800-branches-workforce-down-14-since-bank-debuted/article_73c96916-bf1d-11ec-b566-1f02b2039bbd.html.

3 Id.; Austin Weinstein, "Truist cuts 800 jobs. More cutbacks expected in BB&T, SunTrust merger," The Charlotte Observer, April 20, 2020, https://www.charlotteobserver.com/news/business/banking/article242131711.html.

4 Justin Gray, "Truist customers complain of problems and no one to answer following merger completion," WSB-TV, March 15, 2022, https://www.wsbtv.com/news/local/cobb-county/truist-customers-complain-problems-no-one-answer-following-completion-merger/BPRB66SDO5FJROSVMFJG3LLS54/.

As concentration in other sectors of the economy has received more attention in recent years, bank consolidation has largely escaped the same level of scrutiny. Indeed, some policymakers are arguing that, in the wake of recent banking turmoil, more consolidation is needed.[5] Calls for fewer banks are particularly notable given the foundational role that banking plays in commerce and public life. To maintain competition in the banking sector and guard against excessive concentrations of wealth and power, Congress designed specific antitrust statutes: the Bank Holding Company Act of 1956 and Bank Merger Act of 1960.

Traditionally, large numbers of small local banks have played a key role in American commerce, providing banking access to rural communities, offering more affordable financial products with fewer fees, and playing a particularly outsized role in commercial lending to small and newly formed businesses, including during times of economic stress when access to credit dries up.[6] Small local banks continue this legacy across the country today.[7] As banks merge and the banking sector consolidates, many of these benefits disappear.

In recent decades, bank regulators have failed to enforce antitrust laws in the banking sector. There were 15,000 banks in 1990.[8] Today, just 4,000 remain.[9] Authority over bank merger review is shared between regulators at the Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Justice Department, but no banking agency has denied a bank merger in 20 years.[10] While the abandonment of bank antitrust can be traced back to the deregulatory agenda of the 1970s and 1980s, today its consequences have culminated in rampant consolidation that has normalized and intensified a range of competitive, consumer, and economic harms.

When thinking of bank consolidation, many think of the "too-big-to-fail" banks that drove the 2008 crisis, but the past few years alone have seen regulators approve a parade of multibillion-dollar bank mergers among regional and midsized banks, which have supercharged industry concentration. Eight of the 10 biggest bank mergers of the past decade have come since 2019, when SunTrust and BB&T combined to create the sixth-

5 Matt Egan, "Janet Yellen told bank CEOs more mergers may be necessary, sources say," CNN, May 19, 2023, https://www.cnn.com/2023/05/19/investing/janet-yellen-bank-mergers/index.html.

6 Matt Hanauer et al., "Community Banks' Ongoing Role in the U.S. Economy," Federal Reserve Bank of Kansas City, Economic Review 106 No. 2, June 24, 2021, https://www.kansascityfed.org/documents/8159/EconomicReviewV106N2HanauerLytleSummersZiadeh.pdf.

7 "What America's tiny banks do that big ones don't," The Economist, May 7, 2023, https://www.economist.com/united-states/2023/05/07/what-americas-tiny-banks-do-that-big-ones-dont.

8 Jeremy C. Kress, Reviving Bank Antitrust, 72 Duke Law Journal 519-598, Nov. 2022, https://scholarship.law.duke.edu/dlj/vol72/iss3/1/.

9 "Annual Historical Bank Data," FDIC, https://banks.data.fdic.gov/bankfind-suite/historical.

10 The last bank merger denied was Illini Corporation's attempted acquisition of Illinois Community Bank, in 2003. See Illini Corp., 89 Fed. Res. Bull. 85 (2003), https://www.federalreserve.gov/boarddocs/press/orders/2002/20021223/attachment.pdf.

largest U.S. bank.[11] Through 2020 and 2021, U.S. Bank and Union Bank merged to become the fifth-largest bank, as did PNC and BBVA, BMO and Bank of the West, M&T-People's United, Huntington-TCF, and First Citizens-CIT, which created the seventh, 15th, 17th, 25th, and 38th largest U.S. banks, respectively.[12]

The consequences of a drift away from the intent and letter of the bank merger statutes are clear. The abandonment of bank antitrust enforcement is the result of policy choices that have enriched bank executives, creditors, and shareholders while harming the American public, with particularly pronounced effects among low- and moderate-income communities and communities of color.

Fortunately, these policy choices can be reversed. The existence of the bank merger statutes means that bank regulators already have the tools they need to combat banking consolidation. Regulators must demonstrate the courage to learn from their mistakes and deliver a long-overdue strengthening of bank merger controls. This must be done both through policy updates that accurately reflect the banking agencies' duties as required by law, as well as through a return to blocking anticompetitive and harmful bank mergers in order to protect Americans, their families, and their businesses. For banks whose size, complexity, and inability to follow the law already pose a threat to the public and financial stability, regulators also already possess the tools to shrink and simplify these firms to mitigate harm.

Recent signs have pointed to a potential revival of bank merger controls. President Joe Biden's 2021 Executive Order on Competition, which marshalled a whole-of-government approach to reinvigorating competition in the American economy, tasked bank regulators with strengthening bank merger oversight to guard against excessive market power.[13] Bank regulators at the FDIC and DOJ have moved to formally review and update their merger review processes,[14] with others at the OCC and Federal Reserve seeming to do so informally.[15]

This policy brief details the array of harms caused by bank mergers, outlines banking agencies' enforcement authority under the banking statutes, and explains why it is critical to revive the enforcement of these laws.

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11 Kevin Wack, "The biggest bank M&A deals of the last decade," American Banker, March 16, 2022, https://www.americanbanker.com/list/the-biggest-bank-m-a-deals-of-the-last-decade.

12 Id.

13 Fact Sheet: Executive Order on Promoting Competition in the American Economy, White House, July 9, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/.

14 Evan Weinberger, Dan Papscun, "Bank Merger Talks to Offer Clues to Stricter Scrutiny of Deals," Bloomberg Law, Feb. 10, 2023, https://news.bloomberglaw.com/banking-law/bank-merger-talks-to-offer-clues-to-stricter-scrutiny-of-deals

15 Michael J. Hsu, "Opening Remarks for the OCC Bank Merger Symposium," Prepared Remarks, Washington, D.C., Feb. 10, 2023, https://www.occ.gov/news-issuances/speeches/2023/pub-speech-2023-15.pdf.

# I. BANK MERGERS CAUSE A RANGE OF DOCUMENTED HARMS TO AMERICANS, THEIR COMMUNITIES, AND THE ECONOMY

When banks merge, they often tout "efficiency gains" and cost savings that will allow them to better serve their customers. However, in practice, purported efficiencies usually do not materialize, leaving Americans with a range of harms, including higher prices and more fees, lower deposit rates, less access to credit, bank branch closures, and job cuts.[16] In fact, bank mergers have negatively affected banks and their shareholders – one McKinsey study assessed the results of midsized bank mergers and concluded that merged banks underperformed relative to their peers following mergers, negatively affecting share performance and shareholder returns.[17]

## BRANCH CLOSURES & LAYOFFS

Despite the rise of online banking, many Americans continue to take advantage of the convenience of local bank branches. This makes branch closures, an all-too-common consequence of bank mergers, a particularly concerning phenomenon.

To save costs, merging banks often shutter neighboring bank branches – particularly in low-income and minority community areas, compounding economic inequality.[18] Communities of color are disproportionately affected, with 25% of all rural closures in majority-minority census tracts.[19] Branch closures also particularly affect Americans who are elderly, low-income, have a disability, or are without a high school or college degree, since these groups are more likely than others to rely on brick-and-mortar bank branches.[20] Rural Americans already have fewer choices for financial institutions and are also particularly affected by bank merger-fueled branch closures. Accordingly, branch closures often push consumers out of the banking system entirely, leaving them vulnerable to predatory non-bank financial companies like payday lenders, which offer small but high-interest loans and pop up in place of banks after mergers lead to branch closures.[21]

16 Josel F. Houstan and Michael D. Ryngaert, "The Overall Gains from Large Bank Mergers," 18 Journal of Finance and Banking 1155 (1994), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2781687.

17 Vijay D'Silva and Zane Williams, "US midcap banking: The shakeout ahead?," McKinsey, June 30, 2021, https://www.mckinsey.com/industries/financial-services/our-insights/us-midcap-banking-the-shakeout-ahead.

18 Committee for Better Banks, "Mapping the Banking Divide: How Bank Branch Openings Close Financial Opportunities," Sept. 29, 2022, https://storymaps.arcgis.com/stories/79517729f59c4db38dbc3e032e0d42e1; Jaime Weisberg, "How Branch Closures Impact Hard Hit Communities," Association for Neighborhood & Housing Development, May 6, 2021, https://anhd.org/blog/how-branch-closures-impact-hard-hit-communities.

19 Jason Richardson et al., "Bank Branch Closures from 2008-2016: Unequal Impact in America's Heartland," National Community Reinvestment Coalition, May 2017, https://ncrc.org/wp-content/uploads/2017/05/NCRC_Branch_Deserts_Research_Memo_050517_2.pdf.

20 National Survey of Unbanked and Underbanked Households, FDIC, 2021, https://www.fdic.gov/analysis/household-survey/2021report.pdf.

21 Vitaly Bord, "Bank Consolidation and Financial Inclusion: The Adverse Effects of Bank Mergers on Depositors," Harvard Business School, Dec. 1, 2018, https://scholar.harvard.edu/files/vbord/files/vbord-bank_consolidation_and_financial_inclusion_full.pdf.

Bank branches provide a more extensive array of services to communities than can be accomplished with online or mobile banking, including critical community needs like mortgage origination. These services are lost when the branches disappear. Americans' physical proximity to a brick-and-mortar bank branch affects their ability to access credit, playing a significant role in, for example, whether they can obtain a mortgage.[22] The same has been found to be true for businesses and commercial loans, with one study suggesting that post-merger branch closures lead to a 22% decrease in banks' small business lending.[23]

### The Disproportionate Impacts of Bank Mergers on Low-Income and Minority Communities

Bank mergers have significant negative impacts, particularly for low-income and minority communities. Merging banks, which often close bank branches, do so particularly in low-income and minority community areas. Consolidating into a larger business, banks tend to prioritize more profitable branches and close less profitable ones, which often means disinvesting from disadvantaged and low-income communities. For example, 25% of all rural closures, are in majority-minority census tracts. After bank mergers affecting their neighborhoods, lower-income communities experience increased levels of depositor flight and an influx of check-cashing firms, and they are left more vulnerable to financial shocks, with higher levels of debt collection and evictions.[24]

Similarly, banks in more concentrated markets also disproportionately hike fees charged to low-income and minority communities relative to other consumers.[25] Merging banks use their increased market power to raise the cost of home loans. These hikes in particular affect lower-income and minority applicants and are compounded by the fact that merging banks also reduce their approval of low-income and minority mortgage applications relative to other applicants.[26] Merged banks also decrease their approval rates of federally backed mortgage loans insured by the Federal Housing Authority (FHA), particularly hurting lower income and minority borrowers who are more reliant on FHA credit for homeownership.[27]

In sum, the negative effects of bank consolidation on low-income and minority communities amounts to a significant suppression of economic opportunity, reflected in the fact that intergenerational economic mobility has been found to be lower in areas with larger banks.[28]

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22 Sumit Agarwal and Robert Hauswald, "Distance and Private Information in Lending," The Review of Financial Studies, July 2010, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=996602.

23 Yichen Xu, "The Importance of Brick-And-Mortar Bank Offices: Evidence From Small Business And Home Mortgage Lending, 1998-2016," University of Delaware, 2018, https://udspace.udel.edu/server/api/core/bitstreams/99172649-6544-495c-a4b7-7bf028c15038/content.

24 Dimuthu Ratnadiwakara and Vijay Yerramilli, "Effect of Bank Mergers on the Price and Availability of Mortgage Credit," Sept. 2020.

25 Buchak and Jørring, "Do Mortgage Lenders Compete Locally?"

26 Id.

27 Neil Bhutta and Aurel Hizmo, "Do Minorities Pay More for Mortgages?," Board of Governors Federal Reserve Working Paper No. 2020-007, https://academic.oup.com/rfs/article/34/2/763/5827007.

28 Erik J. Mayer, "Big Banks, Household Credit Access, and Intergenerational Economic Mobility," SMU Cox School of Business, No. 21-04, Aug. 6, 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3816308.

Recent examples of banks shuttering branches after mergers abound. For example, following its 2019 merger with MB Financial, Ohio-based Fifth Third Bank shuttered 44 branches in and around Chicago – nearly one fifth of its locations.[29] The $22 billion mega-merger between Columbus-based Huntington Bank and Michigan's TCF in 2021 led to more than 250 branch closures, drawing public criticism from Ohio Senator Sherrod Brown.[30] M&T Bank, as part of its $7.6 billion purchase of Connecticut-based People's United, announced plans to reduce its footprint in New York and Connecticut by more than 40 locations.[31] U.S. Bank, after winning approval for its $8 billion takeover of Union Bank in December 2022, rang in the new year by announcing 145 branch closures in California alone.[32]

Recent examples of bank-merger induced job cuts are similarly ubiquitous. The BB&T-SunTrust merger saw more than 8,000 jobs lost.[33] After a $2.6 billion merger with Flagstar Bank, New York Community Bank in 2023 cut more than a thousand jobs,[34] while after its merger M&T announced plans to cut 28% of its jobs in the state, a decision that earned public criticism from both of the state's senators.[35]

## BANK CONSOLIDATION RAISES COSTS AND REDUCES CREDIT ACCESS

Bank mergers tend to lead banks to reduce the services they provide while increasing prices across most services and products. Evidence demonstrates that bank consolidation increases the "junk fees" banks charge for basic financial services, making it more expensive for low-income households to keep their bank accounts.[36]

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29 Richard Klicki, "Fifth Third to close 44 local branch banks," The Daily Herald, June 18, 2019, https://www.dailyherald.com/business/20190618/fifth-third-to-close-44-local-branch-banks.

30 Robert Channick, "Fifth Third to close 44 Chicago-area branches in July after completing MB bank merger," Chicago Tribune, June 17, 2019, https://www.chicagotribune.com/business/ct-biz-fifth-third-mb-close-branches-20190617-story.html; Tristan Navera, "Here's where the next wave of Huntington branch closings will take place," Columbus Business First, April 22, 2021, https://www.bizjournals.com/columbus/news/2021/04/22/huntington-bank-closing-44-branches-in-meijer-stor.html; Letter from Senator Sherrod Brown to Acting Comptroller of the Currency Michael Hsu, March 2, 2023, https://www.banking.senate.gov/imo/media/doc/occ_letter.pdf.

31 Denise Civiletti, "M&T Bank's acquisition of People's United to close in early April," Riverhead Local, March 17, 2022, https://riverheadlocal.com/2022/03/17/mt-banks-acquisition-of-peoples-united-to-close-in-early-april.

32 John Lindt, "U.S. Bank acquires Union Bank. Here's what it means for customers in SLO County," The San Luis Obispo Tribune, March 8, 2023, https://www.sanluisobispo.com/news/business/article272814670.html.

33 Craver, "Truist"; Austin Weinstein, "Truist cuts 800 jobs. More cutbacks expected in BB&T, SunTrust merger," The Charlotte Observer, April 20, 2020, https://www.charlotteobserver.com/news/business/banking/article242131711.html.

34 Candice Williams, "Flagstar Bank trims retail mortgage, cuts jobs in wake of merger," The Detroit News, Jan. 31, 2023, https://www.detroitnews.com/story/business/2023/01/31/flagstar-bank-trims-retail-mortgage-cuts-jobs-in-wake-of-merger/69858748007/.

35 Kenneth R. Gosselin, "M&T Bank laid off more than 300 in its acquisition of People's United. There's more to come.," Hartford Courant, Oct. 3, 2022, https://www.courant.com/2022/10/03/mt-bank-laid-off-more-than-300-in-its-acquisition-of-peoples-united-theres-more-to-come/.

36 Bord, "Bank Consolidation."

In consolidated markets, banks charge higher fees on overdrafts, stop payments, ATMs, and non-interest mortgage charges.[37] And, as merged banks take advantage of their increased market power, they reduce the interest rates paid to depositors on checking and savings accounts.[38]

Bank mergers are associated with higher interest rates on mortgages and personal loans,[39] and higher rejection rates for mortgage applications.[40] Low-income and racial minority communities are also disproportionately targeted by higher fees relative to other customers, compounding racial wealth imbalances and exacerbating economic inequality. [41]

In addition to a reduction in small business credit availability, evidence suggests that banks' market power plays a key role in their ability to administer critical government funding. Larger banks may be less effective in distributing benefits to their communities. For example, the federal Paycheck Protection Program (PPP) offered forgivable loans through banks to American firms at the height of the COVID pandemic. Firms in areas with the highest concentration of big banks were less likely to receive funding than areas served by greater number of community financial institutions.[42] Other findings indicated that areas predominately served by the largest banks were less likely to receive PPP loans, even given those banks' typical small-business lending activity. Surprisingly, the four largest U.S. banks, despite originating 36% of all small business loans before the pandemic, originated just 3% of PPP loans.[43] This suggests that large banks may have prioritized making fewer, bigger loans in search of higher fees.

## COMMUNITIES' FINANCIAL HEALTH AND SAFETY

In communities affected by bank mergers, higher fees and loss of access to financial services often push Americans out of the banking system and into the arms of predatory firms like payday lenders and check-cashers. This makes households more likely to accrue debt, more likely to have their debt sent to a collections agency, and even more likely to be evicted from their homes.[44]

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37 Timothy H. Hannan, "Retail Deposit Fees and Multimarket Banking," Finance and Economics Discussion Series Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board, 2005, https://www.federalreserve.gov/pubs/feds/2005/200565/200565pap.pdf; Charles Kahn et al., "Bank consolidation and the dynamics of consumer loan interest rates," Journal of Business, 78 No. 1, 2005, https://www.jstor.org/stable/10.1086/426521?seq=11.

38 Valeriya Dinger, "Bank Mergers and Deposit Interest Rate Rigidity," Federal Reserve Bank of Cleveland Working Paper No. 11-31, Dec. 4, 2011, https://ssrn.com/abstract=1971315.

39 Dimuthu Ratnadiwakara and Vijay Yerramilli, "Effect of Bank Mergers on the Price and Availability of Mortgage Credit," April 30, 2022, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695662.

40 Greg Buchak and Adam Jørring, "Do Mortgage Lenders Compete Locally? Implications for Credit Access," Jan. 7, 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3762250.

41 Id.; Erik J. Mayer, "Big Banks, Household Credit Access, and Intergenerational Economic Mobility," Southern Methodist University Cox School of Business Research Paper no. 21-04, https://ssrn.com/abstract=3816308.

42 Haoyang Liu and Desi Volker, "Where Have the Paycheck Protection Loans Gone So Far?," Federal Reserve Bank of New York, May 6, 2020, https://libertystreeteconomics.newyorkfed.org/2020/05/where-have-the-paycheck-protection-loans-gone-so-far.html.

43 João Granja et al, "Did the Paycheck Protection Program Hit the Target?," Becker Friedman Institute Working Paper 2020-52, available at https://bfi.uchicago.edu/wp-content/uploads/BFI_WP_202052-1.pdf.

44 Bord, "Bank Consolidation."

Since bank mergers restrict access to commercial credit, they also reduce small-business formation and expansion, limiting job creation.[45] The results are that areas affected by bank mergers have been shown to exhibit heightened unemployment, a decline in median income, and wider income inequality.[46] Through its negative effects on economic development, bank consolidation has even been associated with a rise in burglary and other property crime, and has been shown to depress real estate value.[47]

After mergers, banks also cut down on customer service. A Deloitte study showed that following a bank merger, customers commonly switch banks and cite customer service issues, including account issues, lost services, poor communication, and migration issues, as the reasons.[48] The study found that 17% of a financial institution's customers switch banks, usually within a month of the merger, with one third of the remaining customers saying they were likely to switch banks within a year.

In one case, after First Union Bank's takeover of CoreStates Financial in 1997, customer service downgrades led to the bank losing a fifth of its customer base.[49]

## COMPETITION

Not needing to attract depositors or borrowers through better rates and lower fees, many of these harms directly stem from the competition between retail banks that is eliminated through bank mergers. However, this immense concentration of wealth and power resulting from bank consolidation distorts market competition more generally, both within the financial industry and across the larger economy, where bank consolidation has been identified as a "key cause of industrial concentration."[50]

Within the financial industry, bank mergers do not just reduce the number of smaller banks but also enhance the dominance of the largest banks. Today, the six largest banks – JPMorgan Chase, Bank of America, Citigroup, Wells Fargo, Goldman Sachs, and Morgan Stanley – control more assets ($13.6 trillion) than all others combined.[51] The largest four "trillionaire" banks, which controlled under 10% of the nation's deposits in 1995, have

45 Bill Francis et al., "Bank Consolidation and New Business Formation," Journal of Banking and Finance 32 8, 2008, https://www.sciencedirect.com/science/article/abs/pii/S0378426607003718.

46 Mark J. Garmaise and Tobias J. Moskowitz, "Bank Mergers and Crime: The Real and Social Effects of Credit Market Competition," NBER, Dec. 2004, https://www.nber.org/papers/w11006.

47 Id.

48 "Beyond Day One Minimizing customer attrition during bank mergers and acquisitions," Deloitte Center for Banking Solutions, April 2010, https://www.scribd.com/document/649989245/Beyond-Day-One-Minimizing-Customer-Attrition-During-bank-mergers-and-acquisitions.

49 Laura Miles and Ted Rouse, "Keeping customers first in merger integration," Bain & Company, 2011, https://www.bain.com/contentassets/7964ed171ae74917a5cd5ec4d0638315/bain_brief_keeping_customers_first_in_merger_integration.pdf; Bernard Wysocki, "CoreStates/First Union Merger Opens Window for Competitors," The Wall Street Journal, July 2, 1998, https://www.wsj.com/articles/SB899262495128495000.

50 Kress, "Reviving Bank Antitrust."

51 Large Holding Companies, Federal Reserve Data, 2022, https://www.ffiec.gov/npw/Institution/TopHoldings.

nearly quadrupled their market share, accounting for 36% in 2020.[52] Meanwhile, the share of assets held by smaller banks with total assets under $1 billion has dropped from 25% in 1994 to just 6% in 2019, and is likely even smaller now given recent merger activity and deposit outflow resulting from the 2023 bank failures.[53]

Within banking, the competitive consequences of consolidation can be seen in phenomena such as the "too-big-to-fail subsidy," where big banks enjoy financial benefits purely as a result of their size.[54] For large financial institutions, the perception among other market participants that they will receive government bailouts – only further emphasized during the bank collapses of 2023 – allows big banks to borrow more cheaply than they would otherwise, given their risk profiles.[55] Regulators have found that the too-big-to-fail subsidy gives banks a financial incentive to grow even larger, creating competitive distortions that disadvantage smaller firms, degrade competition, and artificially encourage further consolidation and concentration in the financial system.[56]

Bank mergers pose a threat to competition outside of the financial sector, as banking industry consolidation advantages incumbent firms in other markets and suppresses new market entrants, throttling innovation as larger banks choose to lend to bigger businesses while smaller businesses and entrepreneurs face more difficulty gaining access to credit.[57] For small businesses that access credit after a bank merger, the cost of credit increases, with more difficult terms and lower loan sizes.[58] In its landmark 1963 decision in *United States v. Philadelphia National Bank*, the Supreme Court denied a bank merger and held that U.S. antitrust laws applied to the banking sector, opining that "concentration in banking accelerates concentration generally."[59]

52 Letter from Americans for Financial Reform Education Fund to Assistant Attorney General Makan Delrahim, Oct. 16, 2020, https://ourfinancialsecurity.org/wp-content/uploads/2020/10/AFREF-Comment-on-DOJ-Bank-Merger-Guidelines-10-16-20.pdf.

53 FDIC Community Banking Study, FDIC, Dec. 2020, https://www.fdic.gov/resources/community-banking/report/2020/2020-cbi-study-full.pdf.

54 Gary H. Stern and Ron J. Feldman, "Too Big to Fail: The Hazards of Bank Bailouts," The Brookings Institution, Dec. 2003, https://www.jstor.org/stable/10.7864/j.ctt1gpcc87.

55 Independent Community Bankers of America, "Too-Big-To-Fail Subsidies Threaten Economy, Community Banks, and Taxpayers," 2014, https://www.icba.org/docs/default-source/icba/advocacy-documents/testimony/113th-congress/test073114.pdf?sfvrsn=2.

56 Ofc. Of the Comptroller of the Currency, Bd. Of Governors of the Fed. Reserve Sys. & Fed. Deposit Ins. Corp., Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions, 78 Fed. Reg. 51101, 51102-03 (Aug. 20, 2013), https://www.govinfo.gov/content/pkg/FR-2013-08-20/pdf/FR-2013-08-20.pdf.

57 Nicola Cetorelli and Philip E. Strahan, "Finance as a Barrier to Entry: Bank Competition and Industry Structure in Local U.S. Markets," The Journal of Finance, Oct. 2004, https://www.nber.org/papers/w10832.

58 Garmaise and Moskowitz, "Bank Mergers and Crime"; Jonathan A. Scott and William C. Dunkelberg, "Bank Mergers and Small Firm Financing," Journal of Money, Credit and Banking, Dec. 2003, https://www.jstor.org/stable/3649868.

59 United States v. Philadelphia National Bank, 374 U.S. 321, 370 (1963).

### How Bank Mergers Hurt Small Businesses

Throughout American history, smaller banks have played an outsized role in small business lending. Small businesses and entrepreneurs drive employment and stimulate economic growth, and they tend to rely on smaller local banks to access the credit and financing they need to grow. However, when banks consolidate and merge, small lending declines, as larger banks prioritize larger businesses, often because it is easier to award and manage fewer, larger loans.[60] For small businesses that can still access credit after a bank merger, the cost of credit increases, with more difficult terms and lower loan sizes.[61] Together, these effects mean the rate of new business formation drops following bank mergers – the knock-on effects of which are significant, with documented links to declines in commercial real estate development, construction activity, and local property prices, and rises in unemployment and income inequality.[62]

Like many other industries, the ownership of banks themselves is also heavily concentrated. Banks' unique nature means they often have asset management divisions that own large investments in other banks, blurring the line between competition, consolidation, and coordination. Additionally, several large asset-management firms exert significant control over the banking industry. The same four institutional investors (BlackRock, Vanguard, State Street, and Fidelity) are among the top five biggest shareholders of each of America's largest five banks, while Berkshire Hathaway ranks among the top five shareholders of three of the six largest U.S. banks.[63]

## SYSTEMIC RISK

Research also shows that bank mergers increase systemic risk in the financial system.[64] The Federal Reserve's own research shows that distress at one of the largest U.S. banks is a greater threat to the economy than that of a group of smaller banks representing an equivalent asset size,[65] which intrinsically means that consolidation creates systemic risks.

Nonetheless, the Fed's assessment of the financial stability component of bank mergers, as required by Dodd-Frank, has been criticized as lacking by former Fed officials. Former Federal Reserve Governor Daniel Tarullo has suggested Federal Reserve regulators pay little attention to these systemic risks in bank merger review and lack a "reasonably well-developed and well-explained approach" to financial stability analysis.[66]

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60 FDIC Community Banking Study, 2020, https://www.fdic.gov/resources/community-banking/report/2020/2020-cbi-study-full.pdf.
61 Garmaise and Moskowitz, "Bank Mergers and Crime."
62 Id.
63 José Azar, Sahil Raina, and Martin C. Schmalz, "Ultimate Ownership and Bank Competition," May 4, 2019, https://ssrn.com/abstract=2710252.
64 Simone Varotto and Lei Zhao, "Systemic risk and bank size," Journal of International Money and Finance 82, Apr 2018, https://www.sciencedirect.com/science/article/abs/pii/S0261560617302425; Gregor N.F. Weiß et al., "Systemic risk and bank consolidation: International evidence," Journal of Banking and Finance 40, Mar 2014, https://www.sciencedirect.com/science/article/abs/pii/S0378426613004536.
65 Amy G. Lorenc and Jeffery Y. Zhang, "The Differential Impact of Bank Size on Systemic Risk," Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board, Washington, D.C., 2018, https://www.federalreserve.gov/econres/feds/files/2018066pap.pdf.
66 Daniel K. Tarullo, "Regulators should rethink the way they assess bank mergers," The Brookings Institution, Mar 16, 2022, https://www.brookings.edu/opinions/regulators-should-rethink-the-way-they-assess-bank-mergers/.

Tarullo has pointed to Morgan Stanley's 2020 purchase of electronic trading platform E-Trade as an example. At the time, this was the biggest takeover by a major American lender since the 2008 financial crisis.[67] The transaction inflated the size of Morgan Stanley's balance sheet by more than 7%, but the Fed's analysis of the deal's systemic risk elements concluded that the deal would "only marginally increase the systemic footprint of Morgan Stanley." The Fed instead argued that aspects of the deal would increase financial stability, because the transaction would "diversify [Morgan Stanley's] funding structure."[68]

Similarly, in its 2021 approval of Silicon Valley Bank's acquisition of Boston Private Bank, the Federal Reserve declared that the resulting "organization would not be a critical services provider or so interconnected with other firms or markets that it would pose significant risk to the financial system in the event of financial distress."[69] Silicon Valley Bank's collapse, which led regulators to invoke the systemic risk exception to cover the bank's uninsured liabilities, demonstrated otherwise.

Merging banks also increase financial stability risk by increasing banks' penchant for risk-taking behavior, also referred to as moral hazard.[70] Like the phenomenon of "too-big-to-fail" subsidies, which distort industry competition, too-big-to-fail size also incentivizes riskier behavior as banks may operate with an implicit government bailout guarantee.[71]

Some within the bank review process have objected to this lax approach with respect to systemic risks. Abstaining from a vote to approve PNC's acquisition of Spanish bank BBVA's U.S. operations, then-Federal Reserve Governor Lael Brainard warned that increases in concentration among large regional banks were concerning, calling for the Fed to revisit its merger review framework, noting that "even noncomplex banks in this size range can pose risk to the financial system when they encounter financial distress."[72]

Furthermore, the other backstops for systemic financial risks are broken, and even those do not apply to midsize banks. The Dodd-Frank Act requires large banks to have resolution plans, also known as "living wills," which outline a bank's strategy for how it can safely fail without a government bailout. The largest and most systemically important U.S. banks

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67 Michael J. de la Merced et al., "Morgan Stanley to Buy E-Trade, Linking Wall Street and Main Street," The New York Times, Feb 20, 2020, https://www.nytimes.com/2020/02/20/business/morgan-stanley-etrade.html.

68 Order Approving the Acquisition of a Savings and Loan Holding Company and Certain Nonbanking Subsidiaries, Federal Reserve System, FR Order 2020-05, Sep 30, 2020, https://www.federalreserve.gov/newsevents/pressreleases/files/orders20200930b1.pdf.

69 Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches, Federal Reserve FRB Order No. 2021–08, Jun 10, 2021, https://www.federalreserve.gov/newsevents/pressreleases/files/orders20210610a1.pdf.

70 JinAh Kim, "Effects of Bank Mergers on Risk Leading Up to the 2007-2008 Mortgage Crisis," University of Pennsylvania Wharton School, 2016, https://repository.upenn.edu/cgi/viewcontent.cgi?article=1008&context=spur.

71 Gaetano Chionsini et al., "Bank Mergers, Diversification And Risk," Banca d'Italia, Banking and Financial Supervision, 2004, https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=ee91b897f36031ddae87701899ec152e9bf47fd1.

72 "Statement on PNC/BBVA Application by Governor Lael Brainard," Federal Reserve Board, Press Release, May 14, 2021, https://www.federalreserve.gov/newsevents/pressreleases/brainard-statement-20210514.htm.

have since 2008 frequently submitted resolution plans rejected or found lacking by the FDIC and Federal Reserve.[73] After the failures of SVB, Signature, and First Republic, FDIC board member and Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra concluded, “I don’t think anyone truly believes the current plans filed by Wall Street firms are anything more than a fairy tale.”[74]

# II. BANK MERGER LAWS

Today’s consolidated banking sector did not come about by accident or as an act of nature. To address a period of unprecedented consolidation in banking in the mid-20th century, Congress enacted bank merger laws to protect competition and shield the industry and the economy from the consequences of a hyper-consolidated banking sector. Today’s highly consolidated banking sector and the harms resulting are a direct result of policymakers and enforcers’ abandonment of the bank merger statutes.

After the Great Depression and World War II ushered in a historic era of bank consolidation, a concerned Congress turned its attention to the problem of a rapidly consolidating banking sector. Federal banking regulators lacked a rigorous bank merger review framework, and the Department of Justice, tending to the antitrust directives of the Sherman and Clayton Acts, registered its concern but felt powerless to act.[75] Since the Sherman and Clayton Antitrust Acts prohibited the monopolization of commerce, the DOJ viewed banking and its historic separation from commerce as effectively immune.[76]

To address consolidation in banking, Congress enacted the Bank Holding Company Act in 1956 and the Bank Merger Act in 1960, together known as the bank merger statutes. Procedurally, the statutes required a bank, before acquiring or merging with another bank, to secure approval from its primary federal regulator: the OCC for nationally chartered banks, the FDIC for state banks not part of the Federal Reserve System, and the Federal Reserve for bank holding companies and state banks with membership in the Federal Reserve System.[77]

73 Ryan Tracy, “Regulators Set to Reject Some Big Banks’ ‘Living Wills’,” The Wall Street Journal, April 12, 2016, https://www.wsj.com/articles/regulators-set-to-find-flaws-in-big-u-s-banks-living-wills-1460491197.

74 Prepared Remarks of CFPB Director Rohit Chopra at the 2023 American Economic Liberties Project Anti-Monopoly Summit, Washington, D.C., May 4, 2023, https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-rohit-chopra-2023-american-economic-liberties-project-anti-monopoly-summit/.

75 Philip Marcus, “The Undermining of an Antitrust Bank Merger Policy,” DePaul Law Review 16, 1966, https://via.library.depaul.edu/cgi/viewcontent.cgi?article=3174&context=law-review.

76 Adolf A. Berle, “Banking under the Anti-Trust Laws,” Columbia Law Review 49-5, 1949, https://doi.org/10.2307/1119338.

77 Act of May 13, 1960 (Bank Merger Act), Pub. L. No. 86-463, 74 Stat. 129 codified as amended at 12 U.S.C. § 1828(c) (2018).

The bank merger statutes also provided banking agencies with an analytic framework to use in evaluating proposed mergers. The Bank Merger Act required the agencies to consider several factors, including the state of the banks' finances and management, and the impact of the proposed merger on the public interest.[78] The 2001 Patriot Act required banking agencies add an anti-money laundering component, and after the 2008 financial crisis – a "predictable consequence of excessive consolidation in the banking sector" – the 2010 Dodd-Frank Act required the banking agencies to also consider a merger's risks to the U.S. banking or financial system.[79]

Critically, the Bank Merger Act also set forth a clear anti-monopoly mandate, ordering the banking agencies to "take into consideration the effect of the transaction on competition (including any tendency towards monopoly)."[80] Several years later, in 1966, Congress further aligned the bank merger statutes with the Clayton Act's merger provisions, banning banking agencies from approving transactions that may substantially lessen competition or tend to create a monopoly.[81] As the Clayton Act did, Congress included a carve-out for failing firms that, while little used in antitrust, more broadly has been used for emergency mergers of failing banks.[82]

Congress also helped clarify the DOJ's role in bank mergers, codifying a landmark 1963 Supreme Court ruling in *United States v. Philadelphia National Bank*, which held that the nation's other antitrust laws applied to bank mergers, in addition to bank-specific laws.[83] Affirming the DOJ's role as an antitrust enforcer in banking, Congress required the DOJ to submit competitive impact reports on proposed transactions to the banking agencies and also gave it the authority to challenge a banking agency's merger approval within a 30-day window. The result was a "two-tiered regime" of bank merger enforcement, where both a bank's primary federal regulator and the Justice Department reviewed bank mergers, with each able to challenge the transaction.[84]

In sum, these revisions over the years meant that regulators reviewing bank mergers are obligated to assess a number of criteria, or "prongs":

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78 USA PATRIOT Act of 2001, Pub. L. No. 107-56, § 327, 115 Stat. 272, 318-19, codified at 12 U.S.C. § 1828(c)(11) (2018).
79 Kress, "Reviving Bank Antitrust."
80 Bank Merger Act, Pub. L. No. 86-463, 74 Stat. 129.
81 Pub. L. No. 89-356, 89th Cong., 2d Sess. (Feb. 21, 1966) (12 U.S.C. § 1823 (c)).
82 Kress, "Reviving Bank Antitrust."
83 Federal Deposit Insurance Act, Pub. L. No. 86-463, 74 Stat. 129 (1960).
84 Kress, "Reviving Bank Antitrust."

- The merger's effect on competition;
- Risks to financial stability stemming from the merger;
- The merger's impact on the public interest;
- The condition of the bank's finances and management, as well as its future prospects; and
- The merging banks' record combating money laundering.

## III. TODAY'S CONSOLIDATION IS THE PRODUCT OF POOR POLICY CHOICES

In the late 1970s, antitrust enforcement suffered greatly from the adoption of the Chicago school antitrust theory championed by conservative legal scholars like Robert Bork. The Chicago school advocated the abandonment of the original antitrust statues, holding instead that mergers and consolidation were beneficial and efficient, markets were inherently self-correcting, and that antitrust, once concerned with dispersing power, should concern itself only with consumer prices.[85]

In the decades following, lax antitrust enforcement in banking was compounded by massive industry deregulation, which drove further consolidation. The 1990s saw the Riegle-Neal Act, passed under President Bill Clinton, amending the bank statutes to allow interstate bank mergers. The bill swung open the bank M&A floodgates nationwide, resulting in the highest-ever five-year run of bank mergers in U.S. history.[86] In 1990, the United States had nearly 15,000 banks; by the year 2000, largely due to mergers, that number dropped by one third, even as the five largest banks doubled their market share.[87]

The 1999 Gramm-Leach-Bliley Act repealed critical parts of Great Depression-era financial regulations known as Glass-Steagall, separating commercial banks from investment banks and insurance companies, resulting in another rush of acquisitions and the formation of now-familiar financial giants like Citigroup and J.P. Morgan Chase.[88]

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85 Krista Brown et al., "The Courage to Learn: A Retrospective on Antitrust and Competition Policy During the Obama Administration and Framework for a New Structuralist Approach," American Economic Liberties Project, Jan. 2021, https://www.economicliberties.us/our-work/courage-to-learn/.

86 J. Alfred Broaddus, "The Bank Merger Wave: Causes and Consequences," Prepared remarks the Federal Reserve Bank of Richmond President before the Henrico Business Council, Richmond, VA, Sept. 17, 1998, https://www.richmondfed.org/press_room/speeches/j_alfred_broaddus/1998/broaddus_speech_19980917; Jeffery Y. Zhang, "The Costs and Benefits of Banking Deregulation," Harvard University, April 2017.

87 FDIC BankSuite, https://banks.data.fdic.gov/explore/; Richard A Brealey et al., "The effect of mergers on US bank risk in the short run and in the long run," Journal of Banking and Finance, Nov. 2019, https://www.sciencedirect.com/science/article/abs/pii/S0378426619302353.

88 Jeremy Kress, "Biden Wants to Crack Down on Bank Mergers," University of Michigan Ross School of Business, Aug. 4, 2021, https://michiganross.umich.edu/news/biden-wants-crack-down-bank-mergers-here-s-why-could-help-consumers-and-economy.

During the 2008 financial crisis, the scale and complexity of such giants meant they were "too big to fail" – so policymakers chose to double down, facilitating more consolidation by arranging massive mergers between failing firms and big banks, which further concentrated the industry. Bank of America bought Merrill Lynch and mortgage lender Countrywide; Wells Fargo acquired Wachovia; and JPMorgan absorbed Bear Stearns and Washington Mutual, making it the largest bank nationwide by deposits.[89]

Even the passage of the Dodd-Frank Act, meant to ensure there was never another 2008, met its own rollbacks. A 2018 bank deregulation bill passed under the Trump Administration spurred a frenzy of mega-mergers – eight of the 10 largest bank mergers of the past decade were announced following 2019 – and helped lead to the bank collapses of 2023, which in turn further concentrated the industry. SVB's death vaulted purchaser First Citizens to the sixteenth-largest U.S. bank with its purchase of SVB,[90] and New York Community Bank, among the top 40 in asset size, scooped up Signature Bank's assets in "the deal of a lifetime."[91] The sale of First Republic to JPMorgan, already the nation's biggest bank, allowed JPMorgan to flout the nationwide 10% deposit cap and add $200 billion in assets, the firm's "best deal in decades."[92]

Each of these deals was approved by bank regulators – despite their legal mandate to examine each transaction's impact on competition, public interest, and financial stability, among other criteria.

## IV. RESUSCITATING BANK MERGER ENFORCEMENT

Under the Biden Administration, antitrust enforcers are returning to their original legal mandates to maintain open, decentralized, and competitive markets. President Biden, signing the 2021 Executive Order on Competition, called the "misguided philosophy of people like Robert Bork" the "wrong path" and lamented its consequences: "Less growth, weakened investment, fewer small businesses. Too many Americans who feel left behind. Too many people who are poorer than their parents."[93]

89 Deena Zaidi, "How the Three Largest U.S. Banks Got So Big - And What's Next," The Street, May 10, 2016, https://www.thestreet.com/opinion/how-the-three-largest-u-s-banks-got-so-big-and-what-s-next-13562373.

90 Antoine Gara and Stephen Gandel, "How family-controlled First Citizens became a top-20 US bank," Financial Times, March 28, 2023, https://www.ft.com/content/b883e5f6-811e-4fbe-a522-98f7ed098270.

91 Daniel Jones, "The Deal Of A Lifetime: New York Community Bancorp's Big Win At The Death Of Signature Bank," Seeking Alpha, March 21, 2023, https://seekingalpha.com/article/4588955-new-york-community-bancorp-big-win-signature-bank-bargain-lifetime.

92 Breanna Bradham, "Bove Says First Republic May Be JPMorgan's Best Deal in Decades," Bloomberg, May 1, 2023, https://www.bloomberg.com/news/articles/2023-05-01/odeon-s-dick-bove-says-first-republic-may-be-jpmorgan-s-best-deal-in-decades.

93 Remarks by President Joe Biden at Signing of An Executive Order Promoting Competition in the American Economy, Washington, D.C., July 9, 2021, https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/09/remarks-by-president-biden-at-signing-of-an-executive-order-promoting-competition-in-the-american-economy/.

Calling for a whole-of-government approach across regulatory agencies, the executive order specifically tasked the banking agencies with breaking the cycle of concentration in their industry, directing the Federal Reserve, FDIC, and OCC to assist the Department of Justice in the "revitalization of merger oversight" per the banking statutes in order to "guard against excessive market power."[94]

While both the FDIC and Department of Justice responded by requesting public comment on revamping their bank merger policies, the Federal Reserve and OCC have thus far said little about how they plan to meet this responsibility.

Bank regulators must return to the original letter and intent of the bank merger statutes. As written by Congress, the agencies are legally required to consider the full range of competitive and non-competition harms, including whether a bank merger is in the public interest, raises concerns about the financial and managerial resources of the merging firms, or threatens the financial stability of the already highly concentrated U.S. banking sector.

If banking agencies had continued to enforce the bank merger statutes as written, many of the harms fostered by decades of unchecked bank mergers could have been prevented. Regulators already possess existing authority to reverse these harms by unwinding and shrinking banks whose size and complexity endanger the economy.[95] Moving forward, it is critical that the banking agencies turn the page on an historic era of lax merger policy by acting to swiftly and decisively enforce the bank statutes and block mergers that will harm competition, communities, consumers, and the financial system.

In addition to the Fed, the OCC, and the FDIC, the Justice Department must not forget its role in bank merger review. While the DOJ retains the authority to challenge bank mergers approved by the banking agencies, it has not sued to challenge a bank merger since 1985.[96] The DOJ is also mandated to submit competitive factors reports on mergers to the banking agencies, which are in turn required to summarize their contents in their annual report to Congress. However, whether those reports are never requested by the banking agencies or never delivered by the DOJ, one thing is clear: the reports are not included in the banking agencies' annual reports, leaving policymakers and the public in the dark.[97]

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94 Statement regarding Executive Order on Promoting Competition in the American Economy, July 9, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.

95 Evan Weinberger and Katie Arcieri, "Regulators Must Be Ready to Unwind Complex Banks, Chopra Says," Bloomberg Law, May 4, 2023, https://news.bloomberglaw.com/banking-law/regulators-must-be-ready-to-unwind-complex-banks-chopra-says.

96 Leah Nylen, "Bank mergers come into Democrats' antitrust crosshairs," Politico, April 19, 2021, https://www.politico.com/news/2021/04/19/progressives-biden-bank-merger-threat-483183.

97 2022 Annual Report, Office of the Comptroller of the Currency, https://www.occ.gov/publications-and-resources/publications/annual-report/index-annual-report.html; 2021 Annual Report, Board of Governors of the Federal Reserve System, https://www.federalreserve.gov/publications/files/2021-annual-report.pdf; 2022 Annual Report, Federal Deposit Insurance Corporation, https://www.fdic.gov/about/financial-reports/reports/2022annualreport/2022-arfinal.pdf.

Other regulators may also need to lend a hand in the effort to strengthen bank merger controls. The CFPB, unlike the banking agencies, has direct oversight of big banks' consumer compliance records. Despite the important insight that the CFPB's compliance supervisory authority can offer the banking agencies, particularly around whether allowing banks that routinely violate consumer protection laws to merge may amplify consumer harm, it lacks a formal role in the bank merger review process and has no ability to block a merger that it determines will result in significant consumer harm.[98]

The recent string of mega-deals, like the waves of bank mergers before it, is the product of poor policy choices made by legislators, bank regulators, and antitrust enforcers. The consequences of banking consolidation for the U.S. and its economy have been grave, up to and including the 2008 global financial crisis, which has been identified as "a predictable consequence of excessive consolidation."[99] The emergence of the largest American financial titans and their immense commercial and political power also pose familiar questions about the compatibility of concentrated corporate power with American democracy, concerns thrown into particularly stark relief against the backdrop of the industry's public charter and a history of bank reforms designed as much to prevent the undue concentration of political power as to limit banks' risk-taking.[100]

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98 Jeremy Kress, Comment on Rules, Regulations, Guidance, and Statements of Policy on Bank Merger Transactions (RIN 3064-ZA31), May 2022, https://www.fdic.gov/resources/regulations/federal-register-publications/2022/2022-rfi-rules-regulations-statements-of-policy-regarding-bank-merger-transactions-3064-za31-c-016.pdf.

99 Jeremy Kress and Rohit Chopra, Comment on the U.S. Department of Justice's Bank Merger Competitive Review Guidelines, https://www.ftc.gov/system/files/documents/public_statements/1581730/chopra-comment_doj_banking_merger_guidelines.pdf.

100 Graham Steele et al., Comment on the U.S. Department of Justice's Bank Merger Competitive Review Guidelines on behalf of the American Economic Liberties Project, Washington Center for Equitable Growth, and Open Markets Institute, http://www.economicliberties.us/wp-content/uploads/2020/10/AELP-CEG-OMI-DOJ-bank-merger-letter-FINAL.pdf.