Mr. Jonathan Kanter
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U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

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Submitted electronically to ATR.BankMergers@usdoj.gov

RE: Antitrust Division Banking Guidelines Review

Dear Assistant Attorney General Kanter:

Americans for Financial Reform Education Fund respectfully submits comments on the U.S. Department of Justice's consideration of whether to strengthen the 1995 Bank Merger Competitive Review. Americans for Financial Reform Education Fund is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups deeply concerned about the negative impacts of the highly consolidated banking system on the economy, communities, consumers, and businesses.

The current merger review process by both the Department of Justice and banking regulators has failed to protect the public's interest when evaluating bank mergers. The continual approvals of mergers have resulted in higher costs to consumers, reduced quality of banking services, and produced large banks that pose a risk to the entire financial system and real economy. Unfettered bank mergers contributed to the rise in megabanks and systemic fragility that led to the 2008 financial crisis, which imposed widespread and long-lasting economic costs on everyone, especially lower-income people and people of color.

For these reasons, we welcome the expanded scope of review presented in the Department of Justice's new request for comment on the 1995 bank merger guidelines. AFR maintains the view that the evaluation of proposed bank mergers must become more rigorous given the unique role banks play in the economy. This very notion was highlighted in the Supreme Court's landmark decision in the case of *United States v Philadelphia National Bank*.[1] Justice Brennan noted in his majority opinion that if a small business has difficulty in obtaining credit due to reduced banking alternatives and the increased cost of credit caused by mergers, then that business will have difficulty competing with large businesses. This then puts pressure on small businesses to merge with others. Brennan rightly concluded "…concentration in banking accelerates concentration generally."[2]

AFR urges the DOJ to broaden the factors considered in its competitive analysis to better scrutinize the impact of mergers on consumers and include anti-competitive considerations that go beyond the Herfindahl-Hirschman Index. Diminished product quality, increased barriers to market entry, and increased systemic risk all arise from excessive consolidation. The DOJ should consider these factors alongside the explicit government subsidies banks receive, and the favorable terms too-big-to-fail banks receive when evaluating potential merger transactions. The Department of Justice should challenge proposed bank mergers that are anticompetitive or, at the very least, require clear and convincing evidence from banks to show their proposed mergers serve the convenience and needs of communities over and above their anticompetitive effects.

The case for the DOJ to apply increased scrutiny to bank mergers could not be clearer. The five largest U.S. banks together controlled less than ten percent of the assets in the U.S. banking system in the 1980s.[3] By 2015, that number rose to almost fifty percent.[4] Meanwhile, the total number of U.S. banks decreased by more than two-thirds over the same time span.[5] Given this overall picture, it is not surprising that more than three-quarters of local banking markets are considered uncompetitive, with a Herfindahl-Hirschman Index (HHI) exceeding the DOJ's threshold for "high concentration."[6] Nonetheless, the DOJ has not formally challenged a merger application since 1985.[7]

Additionally, the Department of Justice should pursue a retrospective analysis to determine whether the biggest banks–created through a series of mergers– violate federal anticompetition laws. The DOJ should study the impact of prior banking mergers on consumers and communities to determine if communities are being served despite decreased competition; the costs and prices of banking products pre- and post-merger; and the resulting availability and quality of credit for households and small businesses.

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[1] United States v. Philadelphia National Bank, 374 U.S. 321 (1963)
[2] *Id.*
[3] Moody's Bank & Finance Manual A2 (1991) (In 1989, the five then largest banks controlled $442 billions in assets;); BankFindSuite: Find Annual Historical Bank Data, FED. DEPOSIT INS. CORP. [hereinafter FDIC BankFindSuite] (U.S. commercial and savings banks controlled a total of $4.74 trillion in assets in 1989).
[4] Cox, Jeff. "5 Biggest Banks Now Own Almost Half the Industry." CNBC. April 2015.
[5] *Supra* note 3 FDIC BankFindSuite. The number of U.S. commercial and savings banks declined from 17,811 in 1984 to 5,004 in 2020.
[6] Mayer, Andrew. "Market Concentration and Its Impact on Community Banks", Federal Reserve Bank of St. Louis. April 2018.
[7] Kress, Jeremy. "Modernizing Bank Merger Review." Yale Journal on Regulation (2021). Pg 19.

Both prospective and retrospective analyses should include attention to the varying levels of service provided by different types and sizes of banks in local markets, especially in BIPOC and marginalized communities. Small and local community banks offer different products and services to different types of customers than megabanks.[8] Thus the DOJ should include the size of the banks involved when completing its competitive analysis. When large banks acquire smaller ones, the relational aspect between a community and its bank is severed, thus making it harder for small businesses and consumers to acquire loans and other forms of credit. This is exacerbated in underserved and marginalized communities that already find it harder to obtain credit and banking services.[9]

Increased Consolidation Has Undoubtedly Harmed Consumers

The past two decades of banking consolidation has allowed banks to exercise their market power over consumers and communities by raising prices and/or reducing the quality or range of services, including suppressing interest rates on savings accounts. Banks with greater market power have greater ability to impose additional costs on customers and erode the quality or range of services.

Bank mergers have increased fees for basic banking services. Over the past two decades, the ten largest banks' shares of deposit accounts rose by 75 percent so that by 2020 the top ten banks controlled more than half (51.3 percent) of all deposits.[10] The minimum balance to open a bank account grew 66 percent, from $347 in 2000 to $575 in 2020, according to the Bankrate bank account cost survey.[11] Account fees rose dramatically over the same period, with monthly fees for checking accounts rising by one-third over the past two decades to over $15 (or $180 annually).[12] Rising fees and minimum balances disproportionately impact lower-income depositors.

A 2018 Harvard study found that when bigger banks acquire smaller banks, the increase in deposit account fees and minimum balance requirements causes nearly two percent of deposits to exit annually and that deposit growth is 12 percent lower after four years.[13] High bank account fees are a primary reason unbanked households do not have a bank account according to the FDIC.[14] People of color are substantially more likely to be unbanked. Black households were nearly six times more likely than white households to be unbanked and Latinx households were

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[8] Berger, Allen N. et al. "Does Function Follow Organizational Form? Evidence from the Lending Practices of Large and Small Banks." 76 J. FIN. ECON. May 2005.
[9] Minton, Bernadette A., Alvaro G. Taboada, and Rohan Williamson. Ohio State University, Mississippi State University, and Georgetown University. "Bank Mergers and Small Business Lending: Implications for Community Development." September 2019.
[10] Americans for Financial Reform Ed Fund (AFREF). "Comment on DOJ Bank Merger" October 2020.
[11] Dixon, Amanda. "Survey: Rising ATM and overdraft fees leave consumers paying much more than they did 20 years ago." Bankrate. October 2019.
[12] AFREF. *Supra* note 10. Pgs 10, 11.
[13] Bord, Vitay M. Harvard University. "Bank Consolidation and Financial Inclusion: The Adverse Effects of Bank Mergers on Depositors." December 2018 at 18, 21.
[14] Appam, Gerald et al. FDIC. "2017 FDIC National Survey of. Unbanked and Underbanked Households." October 2018 at 4.

nearly five times more likely to be unbanked (16.9 percent, 3.0 percent, and 14.0 percent, respectively).[15]

A 2005 Federal Reserve Board study found that bank fees were higher in more concentrated markets and that banks operating in multiple markets charged substantially higher fees than banks operating in only one market.[16]

Depositors also bear significant costs to switch to other banks to obtain more cost-effective direct deposit accounts and automated bill payments, a reality made more possible by banks ever increasing market share. This is a major factor in why the common practice of divestitures is not effective in combating anti-competitive pressures. The DOJ and bank regulators often require merging banks to sell branches and their associated deposits as a condition of approval. Because of the increased costs consumers face when switching banks and the relationships developed with their local bank, divestitures do little to reduce a bank's market share of deposits, despite regulators frequently citing divestitures as a mitigating factor to anticompetitive pressures caused by a merger.[17]

Not only do divestitures fail to serve their intended purpose, but there is significant evidence to suggest they decrease consumer welfare. Divestitures have also been found to increase racial disparities in mortgage lending.[18] Simply put, divestitures have proven to be inadequate in addressing competitive harm. Accordingly, we urge the DOJ to adopt a default position that challenge a bank merger rather than consider divestiture in all but exceptional cases.

Mergers' Harmful Effects on Small Businesses

Smaller banks provide most of the credit to small businesses, originating over 90 percent of small business loans between 2000 and 2016.[19] Small businesses are especially affected by the availability of credit in local bank markets. The presence of larger institutions with greater market share effectively shifts local markets away from smaller banks that may be more likely to provide flexible credit needed for small businesses.[20]

Bank consolidation also has a significant negative impact on small businesses and the communities they serve. A 2003 FDIC working paper found that merging banks had much lower small business loan growth than non-merging banks.[21] It also found that when mergers increased local market concentration there was significantly lower small business lending growth, especially in urban areas. A 2014 Massachusetts Institute of Technology paper found

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[15] *Id* at 3.
[16] Hannan, Timothy H. Federal Reserve Board. "Retail Deposit Fees and Multimarket Banking." Staff Paper 2005-65. December 2005 at 27.
[17] Gam, Yong and Zhang, Yunqi. "Dismembered Giants: Bank Divestitures and Local Lending 6." Nov. 2019. (unpublished manuscript), pg 4.
[18] *Id* at 6 and 8.
[19] Bernadette, Taboada, and Williamson. *Supra* note 9 pg 2.
[20] Samolyk, Katherine and Christopher A. Richardson. Federal Deposit Insurance Corporation. Working Paper 2003-02."Bank consolidation and small business lending within local markets." April 2003 at pg 7.
[21] *Id* at 23.

that large bank merger-driven branch closures reduced small business lending for several years and that the decline was concentrated in lower-income areas and communities of color.[22]

This was very well illustrated during the distribution of the Paycheck Protection Program (PPP). A study done by the University of Chicago found larger banks disbursed significantly fewer PPP loans relative to their overall market share, while regions served by smaller banks performed better and were served by banks with fewer constraints in deploying loans.[23]

Reduced small business lending has a disproportionate impact on the ability of businesses owned by people of color and women to access credit.[24] Studies have also found that small businesses pay higher interest rates in more concentrated banking markets.[25]

Bank Mergers Exacerbate Systemic Risk

Bank consolidation has also increased risks to financial stability. As the Federal Reserve's own research demonstrates, distress at one large bank poses a significantly greater systemic risk than distress at several smaller banks with equivalent total assets.[26] Due to recent mergers, PNC, Truist, and Capital One are now bigger than Washington Mutual, Countrywide, and National City when they failed in the 2008 financial crisis.[27] Large bank mergers can exacerbate existing problems, such as the "too-big-to-fail" dynamic, as well as related problems, such as when banks become "too-big-to-manage." Too-big-to-fail status can also distort competition in banking markets by allowing large conglomerates to enjoy more favorable financing than their smaller rivals. To date, neither the Department of Justice nor the Bank Merger Guidelines have considered these effects.

Some argue that analyzing proposed mergers through the lens of systemic risk is not in the DOJ's jurisdiction.[28] We disagree. DOJ has the statutory obligation to analyze all competitive factors.[29] As an example, it is tasked to prevent mergers and transactions that "tend toward monopoly." This mandate should include systemic risk because the "too-big-to-fail" tag gives banks a subsidy over smaller banks, thus reducing competition and creating systemic pressures toward market consolidation. Because the credit markets know that "too-big-to-fail" banks are overwhelmingly likely to receive a bailout if they are failing, lenders charge these banks more favorable rates than their smaller counterparts. During the 2008 crisis, it was estimated the

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[22] Nguyen, Hoai-Luu. Massachusetts Institute of Technology. "Do Bank Branches Still Matter? The Effect of Closing on Local Economic Outcomes." December 2014.
[23] Granja, João; Makridis, Christos; Yannelis, Constantine; Zwick, Eric. "Did the Paycheck Protection Program Hit the Target?" Sept. 2021 at 20.
[24] Nyugen. Supra note 22.
[25] Carletti, Elena, Philipp Hartmann, and Giancarlo Spagnolo. "Implications of the Bank Merger Wave for Competition and Stability." Risk Measurement and Systemic Risk, Proceedings of the Third Joint Central Bank Research Conference. January 2002 at 40.
[26] Lorenc, Amy G. and Zhang, Jeffery Y. " The Differential Impact of Bank Size on Systemic Risk" Fed. Reserve Bd. Fin. & Econ. Discussion Series, Working Paper No. 2018-066, 2018. Pgs 12-18
[27] Wilmarth Jr., Arthur E. "Raising SIFI Threshold to $250B Ignores Lessons of Past Crises." American Banker. Feb 2018.
[28] Bank Policy Institute (BPI). "Response Letter regarding Department of Justice Enforcement Policy Respecting Bank Mergers." February 2022 at 19.
[29] 12 USC §1828(c)(5).

megabanks had an implicit subsidy of up to 600 basis points.[30] The subsidy came during a period when many smaller banks were failing. Between 2008-2013, the FDIC reported almost 500 banks failed.[31] The financial instability during this period directly contributed to a less competitive banking market.

While the funding advantage has decreased since the financial crisis, it has not entirely disappeared. In 2013, years after the financial crisis, two economists from the International Monetary Fund found that the implicit subsidy was worth about 0.8 percentage points (80 basis points).[32] This translates to about $83 billion for the ten largest U.S. banks.

Opponents of increased bank-merger scrutiny also argue that the implied government backing of large banks has greatly diminished due to Dodd-Franks regulation and that the modern requirement for megabanks to have living wills diminished financial stability concerns for large banks.[33] As suggested by the 2013 research cited above, while the subsidy may have decreased, it has not disappeared. In fact, the response to the global pandemic has shown that government backing continues to be on the table for large banks. Starting in March 2020 the Federal Reserve took extraordinary steps to help the large banks, such as relaxing liquidity and capital requirements, providing emergency lending through their repo market operations, and weakening their stress tests.[34] Additionally, lawmakers and regulators have long complained about the credibility of the living wills banks have produced and called for better standards.[35]

Bank mergers that jeopardize financial stability have further adverse consequences. As the 2008 financial crisis showed, federal bank regulators regularly resolve the failure of large banks by merging them with other large banks, either following or in lieu of closure.[36] In this way, the systemic risk that bank mergers spawns generates even more bank consolidation and compounds the negative effects of bank consolidation.

Finally, bank mergers contribute to the existing significant barriers to entry for new banks. There are already high regulatory and financial barriers to potential new entrants for insured deposits. The FDIC approved about 1,000 new charters for deposit insurance between 2000 and 2008.[37] Between 2016-2018, there were only 34 new charters approved.[38] New banks borrowing at higher rates only further reduces their ability to effectively compete with their larger competitors.

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[30] U.S. GOV'T Accountability Office. "Large Bank Holding Companies: Expectations of Government Support." July 2014. Pg 51.
[31] Federal Deposit Insurance Corp. "Crisis and Response: An FDIC History, 2008-2013." Sept. 2020
[32] Ueda, Kenichi and Weder di Mauro, B. "Quantifying Structural Subsidy Values for Systemically Important Financial Institutions," Journal of Banking & Finance, Elsevier, vol. 37(10), 2013 at 3830-3842.
[33] BPI. *Supra* note 28 at B10 and B11.
[34] AFREF. "Fact Sheet: Deregulation at the Powell Fed." August 2021.
[35] Senators Warren and Donnelly. "Donnelly, Warren Encourage Fed, FDIC to Consider All Statutory Tools if Banks' Living Wills Are Found Not Credible" June 2016.
[36] *See* Kathleen C. Engel & Patricia A. McCoy, "*The Subprime Virus: Reckless Credit, Regulatory Failure, and Next Steps"* 103-104, 109-110, 119, 178, 180-181 (Oxford Univ Press, 2011).
[37] FDIC. "De Novo Banks: Economic Trends and Supervisory Framework." FDIC Supervisory Insights. 2018 at 1.
[38] Green, Rachel. "The FDIC's recent upward tick in applications marks a turning point for new banks." Business Insider. July 2019.

Additional Factors for DOJ to Consider in its Competitive Analysis Review

Redefine What Areas Are Considered Markets for More Accurate Results

The antitrust product-market evaluation generally analyzes the deposit market share at the metropolitan area level and the county level for non-metropolitan areas (rural areas).[39] The merger evaluation approach should be the same for urban and rural banks, but urban core (cities) and rural areas should receive greater scrutiny because these markets are already considerably more concentrated than metropolitan areas.

In the case of rural banking markets, the FDIC reported that those markets are generally more concentrated than metropolitan area markets, with fewer banks competing for a smaller and more dispersed population.[40] The mergers that regulators approved between 2007 and 2010 raised concentration levels considerably in rural areas — above the 200 HHI point threshold for closer merger scrutiny — and the median rural Herfindahl-Hirschman Index (HHI) index was above the 1,800 HHI point threshold *prior* to the proposed mergers.[41]

In metropolitan areas, the Justice Department and banking regulators must focus not just on the broader metropolitan areas, but also on the urban city centers which often have higher concentrations of lower-income residents and people of color. In many places, there is a far higher deposit concentration in the urban centers than in the overall metropolitan areas.[42] The top four banks controlled more than three-quarters of the deposits in five of the central cities but none of the overall metropolitan areas in 2020. In Baltimore city, the top four banks control 93.5 percent of deposits and the top four control more than 80 percent of deposits in Detroit and San Francisco cities. Six of these central cities already exceed the 1995 bank merger review 1,800 HHI index threshold but only 3 of the metropolitan areas exceed that threshold for higher scrutiny.[43]

Lastly, on the topic of what should be considered a market, opponents of stricter merger guidelines point to national concentration levels to show that the current merger guidelines are effective in preventing concentration.[44] But this number clouds what is happening at the local level, even if you assess metropolitan areas and not core city centers as we suggest above. All fifteen major metropolitan areas have significantly higher concentration levels than the national deposit concentration level.[45] Seven of the metropolitan areas are at least four times more concentrated. The top four banks control half the deposits in 13 of the 15 major metro areas and control two-thirds of the deposits in seven of them. Four of the metro areas are already above the 1,800 HHI index threshold for merger scrutiny.[46] Bank markets should be assessed locally

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[39] Wheelock, David. "Banking Industry Consolidation and Market Structure: Impact of the Financial Crisis and Recession." Federal Reserve Bank of St. Louis Review. November/December 2011 at 422.
[40] *Id*. at 427
[41] I*d.* at 435 and 436.
[42] AFREF. *Supra* note 10. Pg 8.
[43] *Id.*
[44] BPI. *Supra* note 28 at A1.
[45] AFREF. *Supra* note 10. Pgs 6 and 7
[46] *Id.*

because that is how consumers bank. Judging concentration levels by only considering the national level of concentration purposely hides the devil laying in the details.

Go Beyond Deposit Shares to Assess Mortgage Lending and Investment Banking Data

Currently the Justice Department only applies the Herfindahl-Hirschman Index (HHI) measurement of concentration to bank deposits.[47] However, banks also are one of the main providers for business loans and mortgages. Additionally, since the merger guidelines were written in 1995, traditional banks have expanded into investment banking as a result of the Gramm-Leach-Bliley Act of 1999.[48] Therefore, we urge the DOJ to consider the data from these activities when analyzing competition in a market. Simply analyzing deposit shares alone is not enough to determine a bank's market dominance in a given area.

The literature has found that merging banks lowers the access to mortgage credit and increases the cost.[49] Additionally, these detrimental effects are more pronounced for families of color, lower-income families, lower-income areas, and communities of color. The bank merger wave contributed to the rising concentration in the home mortgage lending market.[50] This concentration increased substantially at the national level between 1994 and 2011 and local market concentration has risen as well, which is especially important because mortgage markets continue to have an important local component.[51]

A 2020 study by Louisiana State University and Houston University researchers found that merging banks increased the interest rates they charged to home mortgage borrowers and that every five percent increase in market share raised conventional mortgage rates by 42 basis points.[52] Merging banks tend to reduce their mortgage lending after completing a deal and the decline in mortgage lending is more pronounced to Black borrowers.[53] A 2013 Harvard study found that in more concentrated markets mortgage lenders were less likely to lower mortgage rates in response to declining yields for mortgage backed securities than less concentrated markets.[54] The DOJ can assess concentration in mortgage lending by reviewing the data required by banks under the Home Mortgage Disclosure Act.

Loosened barriers between commercial and investment banks also mean taking a closer look at market concentration in wholesale investment banking markets as well as more localized markets. Over the past decade we have seen large-scale abuse of market power by dealers in the capital markets, including involvement by some of the largest American banks in the rigging of benchmark interest rates, bid-rigging in the municipal securities markets and Treasury

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[47] Wheelock. *Supra* note 37.
[48] Jackson, William D. Congressional Research Service. "Mergers and Consolidation between Banking and Financial Services Firms: Trends and Prospects." August 2003 at CRs-4 to CRS-6.
[49] Ratnadiwakara, Dimuthu and Vijay Yerramilli. Louisiana State University and University of Houston. "Effect of Bank Mergers on the Price and Availability of Mortgage Credit." September 2020 at 1.
[50] *Id.*
[51] Scharfstein, David and Adi Sunderam. Harvard University and National Bureau of Economic Research. "Concentration in Mortgage Lending, Refinancing Activity, and Mortgage Rates." NBER Working Paper No. 19156. June 2013 at 2.
[52] Dimuthu and Yerramilli. *Supra* note 47. Pgs 3, 18, and 19.
[53] Gam and Zhang. *Supra* note 17. Pgs 4 and 41.
[54] Scharfstein and Sunderam. *Supra* note 49. Pg 3.

markets. These scandals clearly demonstrate that banks are able to use their market dominance to manipulate prices in the capital markets. Jurisdiction over antitrust abuses in these markets is spread across a number of agencies, including the Commodity Futures Trading Commission.[55] However, their authority is limited and does not include the right to review bank mergers. The large bank mega-mergers permitted over the past 20 years have certainly enhanced oligopoly power in wholesale banking markets. The Division must be attentive to these considerations in its bank merger reviews.

Consideration of Fintech Companies

The Department of Justice should not include services provided by online banks or other nonbank financial technology ("fintech") companies in its competitive assessments of proposed bank mergers. As the Department notes, it would be nearly impossible to attribute the geographic distribution of fintech companies, including online transactional accounts or online fintech lenders. Therefore, their inclusion in the analysis of proposed mergers would artificially show diminished market concentration of banks.

Most banking services are tied to their local geographies– most people have bank accounts near their homes or jobs. A 2018 study found that reduced small business lending due to the closing of branches from bank closures did not rebound with the rise of online lenders.[56] Additionally, online accounts are imperfect substitutes for chartered depository institutions, as concluded by the Federal Reserve.[57] Even customers who do some of their banking online continue to patronize a nearby bank branch. For instance, in the Federal Reserve's 2019 Survey of Consumer Finances, families who used online banking were only six percentage points less likely to report visiting a local bank branch in the preceding year compared to families who did not use online banking.[58] The proportion of consumers who regularly patronize a local branch has actually increased as fintech and online banking has expanded over the past decade.[59]

While these fintech platforms should not be considered in evaluating market concentration when considering proposed bank mergers, the Justice Department should vigorously enforce and monitor nonbank fintech companies and major technology platforms that enter into banking and quasi-banking businesses. There are still existing antitrust concerns related to product tying, collusion, and horizontal mergers between fintech companies. This should include evaluating third-party partnerships and service contracts that can increase a bank's risk of data privacy breaches.

The rise of virtually unregulated nonbank fintech companies has occurred alongside the broad-based deregulation of the banking industry over the past quarter century. Fintech firms that offer "shadow payment platforms" that store consumer funds in long-term custody should

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[55] Scopino, Gregory. "Expanding the Reach of the Commodity Exchange Act's Antitrust Consideration." Hofstra Law Review. Vol. 45, No. 2. 2016.
[56] Kress. *Supra* note 7 at 439.
[57] Bhutta, Neil et al. Federal Reserve Bulletin. "Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances." Sept 2020.
[58] *Id.*
[59] *Id.*

not be permitted outside bank regulation and the FDIC’s federal deposit insurance protection. Any firm offering “deposit-like” obligations through online platforms should only do so with all of the approvals needed for "deposits" by federal banking regulators or otherwise face federal enforcement action. Otherwise, nonbank fintech companies that offer online accounts and payment services could effectively engage in banking services while evading the comprehensive regulatory oversight imposed on banks; thus, jeopardizing the safety and soundness of the financial system and the economy.

While the Department of Justice should apply greater scrutiny to fintech firms for the reasons stated above, including their data in the blunt HHI assessment of concentration will only artificially show a decreased market concentration and not accurately score anticompetitive effects.

Other Considerations and Conclusion

The 1995 bank merger guidelines failed to prevent massive consolidation in the banking industry that contributed to the systemic fragility that led to the 2008 financial crisis. The Justice Department should undertake a thorough retrospective assessment of the impact of prior large and serial bank mergers on consumers, customers, communities, and the stability of the financial system. Moreover, the Department should investigate whether the biggest banks are so large and exert so much market power, either alone or in coordination with their large rivals, that they should be broken up into smaller institutions that better serve the public.

The Justice Department must review future proposed bank mergers under a stricter lens to not only consider the additional factors discussed above but require more affirmative proof from banks to show how the public interest is still served despite proposed mergers being anti-competitive. This review must also consider the proposed merger’s potential impact on the risk that a larger bank could pose to the financial system and the competitiveness of the overall economy.

We appreciate the opportunity to comment on this important issue. If you have any further questions or would like to discuss our comments, please contact Renita Marcellin at renita@ourfinancialsecurity.org.

Respectfully submitted,

Americans for Financial Reform Education Fund