February 15, 2022

By electronic submission to ATR.BankMergers@usdoj.gov

Mr. Jonathan Kanter
Assistant Attorney General, Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Re: Antitrust Division Banking Guidelines Review

Dear Assistant Attorney General Kanter:

We write to offer comments informing the Department of Justice of the severe harms that rural communities have incurred as a result of growing consolidation in the banking industry since the adoption of the 1995 Bank Merger Guidelines ("Banking Guidelines"). Our organizations have deep experience working with, and advocating for, rural constituencies that will be affected by the Justice Department's prospective revision of the Banking Guidelines:

- Farm Action leverages its research, policy development, advocacy campaigns, and political expertise to create a food and agriculture system that works for everyday people rather than a handful of powerful corporations. This comment intersects directly with the interests of its supporters, who include farmers, ranchers, small business owners, and other rural constituencies.

- e2 Entrepreneurial Ecosystems (formerly the Center for Rural Entrepreneurship) is a 501(c)(3) organization with 25 years of experience working with rural communities and regions to build sustainable entrepreneurial ecosystems. This comment reflects its on-the-ground experience working with small businesses, local governments, community banks, and other stakeholders in rural communities across North America.

We make two major points in this comment. First, unrestrained bank mergers have caused community banks to disappear *en masse* since the 1980s—leaving many rural communities dependent on absentee-owned banks or with limited access to financial services entirely. Second, the loss of small and locally-owned banks in rural communities has undermined household financial security, deprived local businesses and farmers of credit, contributed to the decline of neighborhoods, extracted local capital, and, fundamentally, deprived rural communities of critical resources for self-determination. Because consolidation has contributed to rural decline in these important ways, we support the Justice Department's efforts to revise the Banking Guidelines to "ensure [they] reflect current economic realities and empirical learning, ensure Americans have choices among financial institutions, and guard against the accumulation of market power."[1]

I. <u>Bank Mergers Are Eliminating Rural-Headquartered Banks</u>

Nearly 7 out of 10 community banks have disappeared since the 1980s—and the pace of their decline is accelerating. In 1984, there were about 14,400 community banks in America and they controlled nearly 40 percent of the industry's assets. By 2011, the number of community banks had declined to little over 6,350 and their share of the market to about 15 percent.[2] Since then, their decline has accelerated—just between 2011 and

2019, the country lost nearly a third of its community banks. Today, there are around 4,500 community banks and their market share stands at approximately 12 percent.[3]

This mass disappearance of community banks has consolidated the industry's assets in the hands of metro-headquartered megabanks. In 1995, megabanks—giant banks with more than $100 billion in assets—controlled 17 percent of all industry assets. By 2005, their market share had grown to 50 percent. As of 2019, megabanks account for 64 percent of industry assets—and the largest four banks alone control 41 percent.[4] None of these megabanks—and very few, if any, of the 105 large banks with $10-100 billion in assets that account for the remainder of the market held by noncommunity banks—are headquartered in rural communities.[5]

The primary driver of this consolidation has been a 30-year sequence of merger waves—but antitrust enforcement has been largely absent. Mergers between banks were responsible for 70-75 percent of the annual decline in the number of community banks between 1984 and 2019.[6] This high level of merger activity is ongoing and potentially intensifying in the aftermath of the pandemic. According to The Wall Street Journal, bank mergers deals were "on track to hit their highest levels since the financial crisis" in 2021, with deals totaling more than $54 billion being announced through September of last year alone.[7] Notwithstanding, the Justice Department has not challenged a bank merger since 1985.[8]

The consolidation of the banking industry has left many small towns and rural communities dependent on absentee-owned banks for access to credit—or with limited access to financial services entirely. In 1995, only 14 percent of rural counties did not have a locally-owned bank. Today, that percentage is more than a third.[9] Between 2012 and 2017 alone, nearly 100 rural banking markets lost all of their bank headquarters and over 40 percent of rural counties lost a significant number of bank branches.[10] Even in rural counties where locally-owned financial institutions still exist, their presence has thinned dramatically. In 1976, around 70 percent of financial institutions in micropolitan counties—and close to 80 percent in more rural counties—were locally owned. By 2007, that percentage was less than 20 percent in both types of counties.[11] As a result, "there is a real concern for the development of 'credit deserts' in small towns and rural communities," as many are becoming dependent on absentee-owned banks and exploitative alternatives, such as payday lenders and check-cashing businesses, for financial services.[12]

II. The Disappearance of Small & Locally-Owned Banks Has Caused Significant Harms For Rural Communities

The loss of small and locally-owned banks in rural communities has undermined household financial security, deprived local businesses and farmers of capital, contributed to the decline of neighborhoods, extracted local capital, and, fundamentally, deprived rural communities of critical resources for self-determination.

1. Household Financial Security

As locally-owned banks have disappeared, rural households have experienced growing financial insecurity. The negative effects of bank mergers and consolidation for consumers—which include physical branch closures, higher fees for account holders, lower interest rates for depositors, and higher interest rates on consumer credit—are significant and tend to be more pronounced in rural communities.[13] As these effects of industry consolidation have undermined access to banking services, rural "bank deserts" have proliferated and rural households have become considerably more likely to lack a bank account and rely on predatory lenders (*e.g.*, payday, auto title, and tax refund lenders)[i] than the typical American household.[14] Credit invisibility has become pervasive among rural adults—with nearly one in six lacking a credit score—and financial insecurity has spread widely.[15] Research has found that, in communities affected by bank mergers, accumulating emergency savings becomes harder and households become "less likely to withstand unemployment shocks" and more likely to experience evictions and have debts sent to collection agencies.[16] This is consistent with the experience of rural communities: In 2019, after enduring decades of bank consolidation and withdrawal, 40 percent of rural Americans reported struggling with routine medical bills, food, and housing—and about half (49%)[ii] said they could not afford to pay an unexpected $1,000 expense of any type.[17]

The effects of banking consolidation on household financial security have been most pronounced in Southern and minority rural communities. Communities Unlimited has found that "continued consolidation of banks" across its Southern footprint is "inevitably leading to the closure of rural branches"[18] and leaving many communities without local branch access.[19] Across the South, rural households are the most likely (compared to urban and suburban households) to be unbanked, with over 40 percent of households in some majority-minority and persistent-poverty rural counties remaining unbanked or underbanked.[20] As a result, particularly in rural communities struggling with persistent poverty, CDFIs have increasingly come to provide the only access to responsible and affordable financial services.[21]

2. *Access to Business & Farm Credit*

The farmers and entrepreneurs of rural communities are uniquely dependent on small, locally-owned banks for access to capital—and are struggling to find the capital to start, grow, and survive shocks as those banks disappear. Entrepreneurial talent is more prevalent in rural communities[iii] and cultivating small businesses is the most effective strategy for achieving economic growth in rural regions.[22] Yet rural businesses generally do not attract equity financing[23] and have greater difficulty providing the "hard" financial data required to satisfy the standardized lending criteria of large banks and online lenders.[24] As a result, rural businesses are uniquely reliant on small, locally-owned banks and their "relationship lending" practices for financing.[25] For example, farmers rely on community banks to obtain 70 percent of agriculture loans[iv]—with most such loans coming

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[i] The use of payday, auto-title, and other predatory loans often has devastating consequences for families. According to a comprehensive analysis by the Center for American Progress, these loans contribute to "financial distress and housing insecurity," "car repossession" which leads to "job loss [and] challenges in caring for children," and ultimately, "family instability, distress, and domestic violence." *See* JOE VALENTI & ELIZA SCHULTZ, CENTER FOR AMERICAN PROGRESS, HOW PREDATORY DEBT TRAPS THREATEN VULNERABLE FAMILIES (2016).

[ii] The percentage of rural Americans who reported struggling with financial security in 2019 (NPR poll) is about 25 percent higher than the percentage of Americans generally (39%) who reported struggling with similar financial security in 2020 (CNBC poll). *Compare* Joe Neel, *Poll: Many Rural Americans Struggle With Financial Insecurity, Access to Healthcare*, NPR (May 21, 2019), *with* Lorie Konish, *Just 39% of Americans could pay for a $1,000 emergency expense*, CNBC (Jan. 11, 2021).

[iii] This may seem counterintuitive to some, particularly given the concentration of venture capital investment and high-growth startups in metro areas. However, empirical research has shown that rural and micropolitan counties, respectively, generate around 45 percent and 14 percent more entrepreneurs as a percentage of their local workforce than metropolitan counties. *See* Sarah Low et al., *Gauging a Region's Entrepreneurial Potential*, 90(3) ECON. REV. 61, 68 (2005). What rural regions lack is not entrepreneurial *talent*, but entrepreneurial *ecosystems* to support local businesses in identifying and capitalizing on market opportunities—ecosystems in which locally-controlled capital plays a critical role. *See* Don Macke & Deborah Markley, *Entrepreneurship and Rural America,* 17(4) RURAL RES. REP. 1 (2006); Mary Emery & Cornelia Flora, *Spiraling-Up: Mapping Community Transformation with Community Capitals Framework*, 37(1) J. COMMUNITY DEV. 19, 28-30 (2006) (examining effect of entrepreneurial ecosystem development strategy deployed in Valley County, Nebraska, from 2001 and 2006).

[iv] This percentage refers to agricultural loans made by commercial banks, which hold ~40 percent of all farm debt in the United States. *See* FDIC, FDIC COMMUNITY BANKING STUDY–DECEMBER 2020 4-13 (2020). The other major provider of agricultural credit is the government-sponsored Farm Credit System and its 72 member institutions, which hold another ~40 percent of all farm debt in the United States. *See id.*

from agriculture-specialized banks that are predominantly small and rural-headquartered.[26] Using their deep knowledge of local communities and face-to-face relationships with borrowers, local banks extend loans to rural businesses that might seem like "difficult credits" to absentee-owned institutions—while judging correctly that the loan will be paid back.[27]

As locally-owned banks have disappeared from rural communities, however, this critical source of capital for rural businesses has dried up. Peaking in 2004, the value of small loans to businesses in rural communities, when adjusted for inflation, has declined to less than half of what it was then—and is below 1996 levels today.[28] This is consistent with what numerous empirical studies have shown—that acquisitions of community banks by nonlocal institutions lead to significant and persistent reductions in credit supply to local small businesses.[29]

The knock-on effects of this credit crunch for rural business formation and resilience have been severe. Between the late 1970s and the 2010s, the number of new firms created in rural areas each year declined from over 100,000 to less than 50,000—not enough to offset the number of rural firms that closed in some years.[30] Although multiple factors contributed to this collapse, banking consolidation is likely a significant one—with empirical research showing bank mergers and associated credit shortages have a significant negative impact on new business formation and expansion that is strongest in rural communities.[31] For small businesses that do obtain startup loans after a merger affects the local banking market, loan sizes shrink, interest rates rise, and their likelihood of defaulting on trade credit often increases.[32] Without adequate credit support to survive downturns in the business cycle, rural businesses—and with them, rural economies—have become less resilient and prone to longer recessions.[33]

3. Neighborhood Development

Rural neighborhoods are deteriorating as the loss of locally-owned banks reduces the supply of commercial development capital, increases foreclosure rates, and causes knock-on effects ranging from lower property values to higher rates of property crime. Community banks headquartered in rural areas are the primary source of capital for commercial real estate (CRE) projects in their communities.[34] Local banks also tend to hold CRE loans in their portfolios and to devote a greater share of their assets to CRE lending generally.[35] When consolidation increases and these banks disappear, real estate development and construction activity tend to decline in affected neighborhoods.[36] Less invested in local real estate markets than the local banks they replace, absentee-owned institutions also tend to work less cooperatively with delinquent borrowers and to pursue foreclosures more readily.[37] The knock-on effects of disinvestment and foreclosure often ripple throughout rural neighborhoods, manifesting in buildings that age and aren't repaired and property values in decline.[38] More broadly, bank mergers have likely frayed the fabric of rural neighborhoods by contributing to economic distress—as they tend to increase unemployment, depress median income, and worsen inequality enough to cause a measurable increase in the number of neighborhood burglaries and other property crimes.[39]

4. Local Capital Reinvestment

Large and absentee-owned banks tend to extract rural capital—either in deposits on the equity side or interest payments on the debt side—instead of reinvesting it in rural communities. Research suggests that community-based banks reinvest up to twice as high a percentage of locally generated funds in their home communities through local loans, local government bonds, and other local investments.[40] Particularly in small communities, the branches of larger banks have been observed to extract local deposits for deployment to projects in larger markets and to support the financial needs of their parent organizations.[41] And in rural and small-town communities where large banks have closed branches (or never had them), they often provide little, if any, community reinvestment financing to local CDFI projects and other public welfare purposes.[42] For example, several years ago, Fahe—a CDFI that has invested more than $1 billion in Appalachia—attempted to raise a

$15.5 million equity fund for LIHTC-leveraged projects from large banks serving the region. BB&T, 5/3 Bank, PNC, and others all declined, but Fahe nonetheless successfully raised that equity fund—from 11 smaller, state-based banks.[43]

More broadly, as local capital has been siphoned out of rural communities, so it seems has the local capacity to finance public expenditures and infrastructure investments. Before the bank consolidation waves began in the late 1980s, rural governments obtained debt capital primarily from small local banks at borrowing costs roughly equivalent[v] to those of metro governments.[44] Those days now appear to be long gone. Between 2000 and 2013, the percentage of total municipal debt held by small community banks (<$1 billion in assets) declined from around 30 percent to less than 10 percent.[45] Meanwhile, the percentage held by the largest banks (>$50 billion in assets) increased from around 50 percent to around 75 percent.[46] No longer able to rely on local banks, rural governments now have to navigate the municipal bond underwriting industry—an opaque, highly concentrated industry—to access financing at costs that research (and a series of lawsuits by states and cities) suggests may well be illegally inflated.[47] The end result is that rural capital is extracted twice—through deposits being outsourced on the front end, and higher costs of financing on the back end.

5. Civic Well-Being

The disappearance of locally-owned banks is fraying the civic fabric of rural communities and, fundamentally, undermining their capacity for self-determination. Many important sectors of the rural economy—from groceries, to healthcare, to agriculture, to banking—have seen growing consolidation over the past few decades.[48] This consolidation has cost rural communities jobs, income, and wealth—but most critically, it has atrophied their once-vibrant "ecosystems" of locally-oriented business, labor, capital, and expertise.[49] These ecosystems are critical because they enable rural people to organically identify commercial opportunities, capitalize new ventures, and compete in broader markets.[50] The independent middle class of local business owners this fosters, in turn, creates an environment in which individuals can utilize their political and social capital to address social problems—with empirical research connecting a thriving independent business class to "better public health, less net out-migration, less unemployment, and fewer crime-related problems."[51] As bank mergers and consolidation across the economy have atrophied local ecosystems, however, rural communities have lost much of this critical foundation for collective efficacy and self-development.[52]

The importance of local banks to rural community ecosystems extends beyond providing capital, as their managers and staff tend to play leading roles in supporting the local charitable and civic institutions that weave the community together.[53] In playing these roles, local banks both *create* social capital in rural communities and serve as key venues for *converting* social capital into tangible capital for business and civic initiatives. The existence of a local, independent bank creates an environment in which community members can utilize their local connections to raise the financing required to address a social problem or seize a commercial opportunity. When a local bank disappears, however, rural people have to ask external decisionmakers for that financing—with profoundly negative effects for the value and efficacy of local networks. In this context, "the loss of local

[v] Arguably, rural governments were getting a better deal on their bonds than metro governments during this period. According to a report by the USDA Economic Research Service examining bond sales during 1977 and 1982, local governments generally made (1) small issuances (2) of unrated or unfavorably rated (3) revenue bonds and (4) sold them noncompetitively—all characteristics which normally would increase borrowing costs. *See* PATRICK J. SULLIVAN, ECONOMIC RESEARCH SERVICE, USDA, THE COST OF METRO AND NONMETRO GOVERNMENT BORROWING iii, 6-16 (1983). Yet, "the demand for rural government bonds was evidently high enough to keep interest rates down [and roughly equivalent to those paid by metro governments] despite these characteristics." *See id.* at iii. There is some evidence that rural governments enjoyed favorable borrowing terms "because of the support of the rural commercial banking system." *See id.* at 10. *See also* PATRICK J. SULLIVAN, ECONOMIC STATISTICAL SERVICE, USDA, BANK SUPPORT OF MUNICIPAL BONDS CRITICAL TO RURAL DEVELOPMENT, 3 RURAL DEV. PERSP. 32-5 (Oct. 1980).

banks [has] move[d] many rural communities closer to social disintegration" and tangibly undermined their ability to build a social and economic future of their own choosing with their own resources.[54]

III. Conclusion & Recommendations

Based on the foregoing, we support the Department of Justice's ongoing efforts to strengthen bank merger review and antitrust enforcement generally. The harms to rural communities summarized in this comment deeply undermine the economic theories—in vogue when the 1995 Bank Merger Guidelines were adopted but since empirically discredited[55]—that bank mergers are socially or economically "efficient." We hope this encourages the Justice Department to adopt revised guidelines under which the Department will ordinarily challenge mergers based on bright-line rules grounded in market realities and will not consider mere divestitures or speculations about post-merger efficiencies or market behavior as justifications for proposed bank mergers.[56] To address the delocalization effects of bank mergers in particular, we encourage the Justice Department to (a) substantially reduce HHI screening thresholds generally;[57] (b) review market-extension bank mergers (which always have delocalizing effects) even when their effect on HHI ratios for individual banking markets is limited; and (c) develop factors and request data for use in conducting a merger review that would enable an adequate assessment of whether a market-extension merger may "substantially . . . lessen competition" or "tend to create a monopoly."[58]

Thank you for considering our views on this important matter.

Sincerely,

Joe Maxwell
Joe Maxwell (Feb 15, 2022 10:04 CST)

Joe Maxwell
President
Farm Action

Donald W Macke
Donald W Macke (Feb 15, 2022 10:10 CST)

Don Macke
Vice President
e2 Entrepreneurial Ecosystems

ENDNOTES

[1] *See* Department of Justice, Office of Public Affairs, *Antitrust Division Seeks Additional Public Comments on Bank Merger Competitive Analysis* (December 17, 2021).

[2] *See* FDIC, FDIC COMMUNITY BANKING STUDY (DECEMBER 2012) 1-1, 2-7 (2012) (showing that the number of community banking organizations declined from 14,408 in 1984 to 6,356 in 2011, and the percentage of banking industry assets held by community banks declined from 38% in 1984 to 14% in 2011).

[3] *See* FDIC, QUARTERLY BANKING PROFILE: SECOND QUARTER 2021 15(3) FDIC Q. 1, 6, 17, 20 (2021) (showing that, as of end of Q2 2021, there were 4,490 community banking organizations holding $2.672 trillion, or 11.7 percent, of $22.789 trillion in total banking industry assets). *See also* FDIC, FDIC COMMUNITY BANKING STUDY (DECEMBER 2020) vi, 2-1 (2020) (showing there were 4,750 community banking organizations as of year-end 2019 holding 12 percent of total industry assets).

[4] *See* Institute for Local Self-Reliance, *Bank Market Share by Size of Institution*, (May 14, 2019).

[5] *See* BOARD OF GOVERNORS OF THE FEDERAL RESERVE, STATISTICAL RELEASE ON INSURED U.S.-CHARTERED COMMERCIAL BANKS THAT HAVE CONSOLIDATED ASSETS OF $300 MILLION OR MORE, RANKED BY CONSOLIDATED ASSETS (Sept. 30, 2021) (providing headquarter locations for largest 2,127 commercial banks in the United States).

[6] *See* FDIC, FDIC COMMUNITY BANKING STUDY (DECEMBER 2020) 2-5 (2020) (showing inter-company mergers caused 2.3 percent out of a total 3.2 percent average rate of annual decline in the number of bank charters between 1985 and 2011, and 3.3 percent out of a total 4.3 percentage average rate of annual decline in the number of bank charters between 2011 and 2019).

[7] *See* Orla McCaffrey, *Bank Mergers Are On Track to Hit Their Highest Levels Since the Financial Crisis*, WALL STREET J. (Sept. 28, 2021).

[8] *See* Jeremy C. Kress, *Modernizing Bank Merger Review*, 37 YALE J. REG. 435, 453 (2020) ("After an initial torrent of antitrust-related denials in the 1970s, the banking agencies have not denied a bank-merger application involving an institution with more than $1 million in assets on competitive grounds since 1980. The DOJ, meanwhile, has not challenged a bank merger since 1985.").

[9] *See Rural Distress and the Concentration of Financial and Economic Power: Hearing on An Economy that Works for Everyone: Investing in Rural Communities Before S. Comm. on Banking, Housing, and Urban Affairs*, 117th Cong. 2 (Apr. 20, 2021) (Testimony of Stacy Mitchell, Co-Executive Director, Institute for Local Self-Reliance).

[10] *See* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, PERSPECTIVES FROM MAIN STREET: BANK BRANCH ACCESS IN RURAL COMMUNITIES 3 (Nov. 2019). *See also* Ruth Simon & Coulter Jones, *Goodbye, George Bailey: Decline of Rural Lending Crimps Small-Town Business*, WALL STREET J. (Dec. 25, 2017) (analyzing FDIC and National Center for Health Statistics data to find that rural counties have lost approximately 20% of their bank branches since 1994, leaving at least 35 counties without a single bank branch and about 115 counties with just one branch); THE CENTER FOR RURAL PENNSYLVANIA, CHALLENGES AND OPPORTUNITIES FOR COMMUNITY BANKS IN RURAL PENNSYLVANIA at 7 (Jan. 2010) ("The most notable changes in [Pennsylvania] rural [banking] markets are the decline in the number of institutions whose headquarters are located in the same market as their branches (in-market institutions) and a decline in the number of small community banks [from 141 in 1995 to 91 in 2005]."). Research also suggests that banking consolidation has starkly limited the growth of new bank branches in rural communities, with around 40% of counties with an urban population of less than 2,500, and around 22% of counties with an urban population of 2,500—19,999, seeing zero new branches established between 1996 and 2011. *See* Paul Ellinger, *Bank Branch Expansion in Rural Areas*, FARMDOC DAILY (May 25, 2012). *See also* PARTNERS FOR RURAL TRANSFORMATION, UNLOCKING THE COMMUNITY REINVESTMENT ACT'S POTENTIAL TO ENSURE PERSISTENT PROSPERITY IN RURAL AMERICA 3 (Oct. 15, 2021) ("[R]ural persistent poverty communities are not targets for bank branch location, and in fact, are frequently casualties of optimization strategies resulting in branch closures. The Housing Assistance Council reports that three out of four counties that lost at least 10% of [their] branches are in rural areas.")

[11] *See* Charles M. Tolbert et al., *Restructuring of the Financial Industry: The Disappearance of Locally Owned Traditional Financial Services in Rural America*, 79(3) RURAL SOC. 355, 365 (2014). *See also* F. Carson Mencken & Charles M. Tolbert, *Restructuring of the Financial Industry and Implications for Sources of Start-Up Capital for New Businesses in Nonmetropolitan Counties*, 31(1) J. RURAL SOC. SCI'S. 71, 73 (2016) ("According

to the Economic Census, in 2002 the top four commercial banks owned 12.6% of all banking establishments, and by 2007, the top four expanded their ownership to 31.8% of banking establishments. In 2014, over half of all branch [bank] establishments in the United States were owned by a bank or bank holding company in another state."); THE CENTER FOR RURAL PENNSYLVANIA, CHALLENGES AND OPPORTUNITIES FOR COMMUNITY BANKS IN RURAL PENNSYLVANIA 7 (Jan. 2010) ("The average share of in-market institutions (banks that are headquartered and operate their offices in the same market) fell from 36 percent in 1995 to 25 percent in 2005 rural markets" in Pennsylvania).

12 *See* Charles M. Tolbert et al., *Restructuring of the Financial Industry: The Disappearance of Locally Owned Traditional Financial Services in Rural America*, 79(3) RURAL SOC. 355, 376 (2014).

13 Bank mergers tend to inflate the fees that banks charge consumers to maintain deposit accounts and depress the interest rates that banks pay to those accountholders. *See* Robin A. Prager & Timothy H. Hannan, *Do Substantial Horizontal Mergers Generate Significant Price Effects? Evidence from the Banking Industry*, 46 J. INDUS. ECON. 433, 442- 449 (1998) (concluding that deposit rates offered by banks that merged between 1991 and 1994 declined relative to those offered by non-merging banks); Vitaly M. Bord, *Bank Consolidation and Financial Inclusion: The Adverse Effects of Bank Mergers on Depositors*, Corpus ID 31442771, 6-9 (Dec. 1, 2018) (unpublished manuscript) (finding significant increases in account fees following acquisitions of banks with less than $10 billion in assets by banks with more than $10 billion in assets between 1994 and 2016). There is also substantial evidence that, in general, as banks grow larger, they tend to charge substantially higher fees for deposit account services than smaller banks. *See, e.g.,* CONSUMER FIN. PROT. BUREAU, CFPB STUDY OF OVERDRAFT PROGRAMS: A WHITE PAPER OF INITIAL DATA FINDINGS 52 (2013) (stating that, in 2012, the median NSF fee and median overdraft fee among thirty-three large banks were both $34, while the median NSF fee and median overdraft fee among 800 smaller banks and credit unions were both $30); EDMUND MIERZWINSKI, U.S. PIRG EDUC. FUND, BIG BANKS, BIGGER FEES 2012: A NATIONAL SURVEY OF FEES AND DISCLOSURE COMPLIANCE 1-2, 9-11 (2012), (reporting results of survey showing that "small banks had lower average checking account fees, overdraft fees and foreign or off-us ATM fees, as well as lower balance requirements to avoid checking fees, than big banks"); U.S GOV'T ACCOUNTABILITY OFFICE, GAO-08-281, BANK FEES: FEDERAL BANKING REGULATORS COULD BETTER ENSURE THAT CONSUMERS HAVE REQUIRED DISCLOSURE DOCUMENTS PRIOR TO OPENING CHECKING OR SAVINGS ACCOUNTS 16 (2008) ("Large institutions on average charged between $4.00 and $5.00 more for insufficient funds and overdraft fees than smaller institutions."); Arthur E. Wilmarth Jr., *The Transformation of the U.S. Financial Services Industry, 1975-2000: Competition, Consolidation, and Increased Risks*, 2002 U. ILL. L. REV. 215, 195 (2002) (citing earlier studies finding that "large, multistate banks charge fees on deposit accounts that are significantly higher than the fees assessed by small community banks"). By contrast, research has found that, as banking competition intensifies in a local market, the share of unbanked households decreases, with the strongest effect in rural areas. *See* Claire Celerier & Adrien Matray, *Unbanked Households: Evidence of Supply-Side Factors*, SSRN No. 2392278 (2014).

Bank consolidation also typically leads to branch closures that are concentrated in low-to-moderate income areas, which are more prevalent in rural counties. *See* Hoai-Luu Q. Nguyen, *Are Credit Markets Still Local? Evidence from Bank Branch Closings,* 11 AM. ECON. J.: APPLIED ECON. 1, 15-17 (2019) (finding evidence of significant branch closures by merging banks); Lydia DePillis, *The Internet Didn't Kill Bank Branches. Bank Mergers Did.*, WASH. POST (July 9, 2013); GARY A. DYMSKI, THE BANK MERGER WAVE: THE SOCIAL AND ECONOMIC CONSEQUENCES OF FINANCIAL CONSOLIDATION 95 (1999) (noting that post-merger branch closures are typically spread evenly among LMI and upper-income areas, but LMI areas are hit harder because they have fewer branches to begin with). *See also* PARTNERS FOR RURAL TRANSFORMATION, UNLOCKING THE COMMUNITY REINVESTMENT ACT'S POTENTIAL TO ENSURE PERSISTENT PROSPERITY IN RURAL AMERICA 3 (Oct. 15, 2021) ("Of the country's 395 persistent poverty counties, eight of ten are nonmetro (rural)[.]"). These closures have stronger effects on banking accessibility for rural consumers because they are substantially more likely (compared to urban consumers) to use physical branch services. *See* FDIC, HOW AMERICA BANKS: HOUSEHOLD USE OF BANKING AND FINANCIAL SERVICES at 5 (2019) (finding rural consumers were more likely to use physical branch services, such as bank tellers, than urban consumers). *See also* FDIC, BRICK AND MORTAR BANKING REMAINS PREVALENT IN AN INCREASINGLY VIRTUAL WORLD, 9(1) FDIC Q. 37 (2015).

Finally, there is substantial evidence that bank consolidation in local markets tends to result in higher interest rates on consumer loans. *See* Charles Kahn et al., *Bank Consolidation and the Dynamics of Consumer of Consumer Loan Interest Rates*," 78(1) J. BUS. 99 (2005); BRIAN T. MELZER & DONALD P. MORGAN, FEDERAL RESERVE BANK OF NEW YORK, STAFF REP. NO. 391: COMPETITION AND ADVERSE SELECTION IN THE SMALL DOLLAR LOAN MARKET: OVERDRAFT VS. PAYDAY CREDIT (2014).

14 According to a study conducted by the Federal Reserve Bank of St. Louis, nearly 1 out of every 6 rural census tracts today is a "banking desert" or "potential banking desert," compared to 1 out of every 100 urban census tracts. *See* Drew Dahle & Michelle Franke, *"Banking Deserts" Become a Concern as Branches Dry Up*, REG'L ECON., FED. RESERVE BANK OF ST. LOUIS (July 25, 2017) (finding 13 percent of rural census tracts, or 1585 total, were "banking deserts" or "potential banking deserts" in 2014, compared to less than 1 percent of urban

census tracts, or 602 total). 86 new banking deserts were created in rural areas between 2008 and 2016, according to the National Community Reinvestment Coalition. *See* Anna Hrushka, *Keeping the Banking Desert at Bay in Rural America*, BANKING DIVE (Feb. 18, 2020). Rural households are nearly 15 percent more likely than households nationally, and twice as likely as suburban households, to be unbanked. *See* FDIC, HOW AMERICA BANKS: HOUSEHOLD USE OF BANKING AND FINANCIAL SERVICES at 14-15 (2019). In the South and West, rural households are the most likely (compared to urban and suburban households) to be unbanked, with 9.1 percent of rural households in the South and 6 percent of households in the West lacking a bank account. *See id.* at 15. Rural households are also nearly 30 percent more likely to use nonbank credit (*e.g.*, payday, auto-title, and tax-refund lenders) than households nationally. *See id.*, at 14-15 (finding that 6.3 percent of rural households use nonbank credit, *e.g.*, payday, auto-title, and tax-refund lenders, compared to 4.8 percent of all households); *see also* Palash Ghosh*, US Banks Closing Branches at Rapid Pace, Making Poor and Rural Customers Vulnerable to Usurious Lenders*, FORBES (Jan. 29, 2021). The growth of predatory financial services as a replacement for traditional, locally-owned banking in rural areas has also been documented by the number of establishments. *See* Charles M. Tolbert, et al., *Restructuring of the Financial Industry: The Disappearance of Locally Owned Traditional Financial Services in Rural America*, 79(3) RURAL SOC. 355, 360 (2014) (finding that, between 1976 and 2007, alternative financial service establishments have "proliferated at a rate greater than population change" in rural counties).

[15] *See* KENNETH BREVOORT ET AL., CFPB, DATA POINT: THE GEOGRAPHY OF CREDIT INVISIBILITY 11 (Sept. 2018); KENNETH BREVOORT ET AL., CFPB, DATA POINT: CREDIT INVISIBLES (May 2015); Joe Neel, *Poll: Many Rural Americans Struggle With Financial Insecurity, Access to Healthcare*, NPR (May 21, 2019) (providing that poll conducted by NPR found "a substantial number (40%) of rural Americans struggle with routine medical bills, food and housing."). Because credit invisibility in non-rural communities is often concentrated among adults younger than 25 years old, the exceedingly high level of credit invisibility in rural areas (which typically skew older than metropolitan areas) is even more indicative of financial exclusion. *See* KENNETH BREVOORT & MICHELLE KAMBARA, CFPB, DATA POINT: BECOMING CREDIT VISIBLE (2017).

[16] *See* Vitaly M. Bord, *Bank Consolidation and Financial Inclusion: The Adverse Effects of Bank Mergers on Depositor*, Corpus ID 31442771 (Dec. 1, 2018) (unpublished manuscript) (finding that, in zip codes affected by bank mergers, households were "less likely to withstand unemployment shocks during the Great Recession" and "more likely to have debts sold to collection agencies" and "to experience evictions" than households in control zip codes).

[17] Joe Neel, *Poll: Many Rural Americans Struggle With Financial Insecurity, Access to Healthcare*, NPR (May 21, 2019).

[18] *See* PARTNERS FOR RURAL TRANSFORMATION, UNLOCKING THE COMMUNITY REINVESTMENT ACT'S POTENTIAL TO ENSURE PERSISTENT PROSPERITY IN RURAL AMERICA 4 (Oct. 15, 2021). *See also* Communities Unlimited, Comment to the Federal Reserve Board of Governors on Community Reinvestment Act Regulations (Feb. 2021).

[19] *See* PARTNERS FOR RURAL TRANSFORMATION, UNLOCKING THE COMMUNITY REINVESTMENT ACT'S POTENTIAL TO ENSURE PERSISTENT PROSPERITY IN RURAL AMERICA 4 (Oct. 15, 2021). *See also* Communities Unlimited, Comment to the Federal Reserve Board of Governors on Community Reinvestment Act Regulations (Feb. 2021).

[20] In the South and West, rural households are the most likely (compared to urban and suburban households) to be unbanked, with 9.1 percent of rural households in the South and 6 percent of households in the West lacking a bank account. *See* FDIC, HOW AMERICA BANKS: HOUSEHOLD USE OF BANKING AND FINANCIAL SERVICES at 15 (2019). "Along the Texas border, in persistent poverty counties such as Cameron, Hidalgo, Willacy, and Starr, between 14 and 18 percent of households remain unbanked and 20 to 24 percent remain underbanked, twice the proportion of households as that of Texas and the U.S. overall." *See* PARTNERS FOR RURAL TRANSFORMATION, UNLOCKING THE COMMUNITY REINVESTMENT ACT'S POTENTIAL TO ENSURE PERSISTENT PROSPERITY IN RURAL AMERICA 4 (Oct. 15, 2021); *see also* cdcb, Comment to the Federal Reserve Board of Governors on Community Reinvestment Act Regulations (February 2021).

[21] *See* PARTNERS FOR RURAL TRANSFORMATION, UNLOCKING THE COMMUNITY REINVESTMENT ACT'S POTENTIAL TO ENSURE PERSISTENT PROSPERITY IN RURAL AMERICA 4 (Oct. 15, 2021); DEBORAH MARKLEY ET AL., RURAL POLICY RESEARCH INSTITUTE, ACCESS TO CAPITAL IN RURAL AMERICA: SUPPORTING BUSINESS STARTUP, GROWTH AND JOB CREATION IN THE WAKE OF THE GREAT RECESSION: INSIGHTS FROM THE FIELD AND POLICY RECOMMENDATIONS 9 (Oct. 2012).

[22] *See* H. Stephens, M. Partridge & A. Faggian, *Innovation, Entrepreneurship, and Economic Growth Lagging in Regions*, 53(5) J. REG'L SCI. 778 (2013); H. Stephens & M. Partridge, *Do Entrepreneurs Enhance Economic Growth in Lagging Regions?* 42(4) GROWTH & CHANGE 431 (2011); Don Macke & Deborah Markley, *Entrepreneurship and Rural America*, 17(4) RURAL RES. REP. 1 (2006). In general, there is significant evidence that increasing a community's density of small, locally-owned businesses increases growth in local jobs, wages, and gross income, while expanding the presence of large, absentee-owned businesses does not. *See generally* DON MACKE ET AL., ENTREPRENEURIAL ECOSYSTEMS, ORD COMPARATIVE PERFORMANCE ANALYSIS: AN ENTREPRENEURIAL COMMUNITY (Oct. 2021); E2

Entrepreneurial Ecosystems, Why Entrepreneurship? Making the Case for Entrepreneurship (June 2020); Don Macke et al., E2 Entrepreneurial Ecosystems, The NetWork Kansas Financial System: A Model for Other Regions and States 7 (Aug. 18, 2021); Deborah Markley et al., Rural Policy Research Institute, Access to Capital in Rural America: Supporting Business Startup, Growth and Job Creation in the Wake of the Great Recession: Insights from the Field and Policy Recommendations (Oct. 2012). For comparisons of the effects of small, locally-owned businesses and large, non-local businesses on local economic growth, *see* Stephan J. Goetz & David A. Fleming-Muñoz, *Does Local Firm Ownership Matter?*, 25(3) Econ. Dev. Q. 277 (2011); Anil Rupasingha, Federal Reserve Bank of Atlanta, Locally Owned: Do Local Business Ownership and Size Matter for Local Economic Well-Being? (Aug. 2013). For comparisons of the effects of small, locally-owned businesses and large, non-local businesses on local jobs and wages, *see* John Haltiwanger et al., *Who Creates Jobs? Small Versus Large Versus Young*, 95(2) Rev. Econ. Stat. 347 (2013); Cochi Ficano, *Business Churn and the Retail Giant: Establishment Birth and Death from Wal-Mart's Entry*, 94(1) Soc. Sci. Q. 263 (2012); John Haltiwanger et al*., Mom-and-Pop Meet Big-Box: Complements or Substitutes*?, 67(1) J. Urb. Econ. 116 (2010); Stephan Ciccarella et al., *The Effects of Wal-Mart on Local Labor Markets,* 63 J. Urb. Econ. 405 (2008); Arindrajit Dube et al., UC Berkeley Labor Center, A Downward Push: The Impact of Wal-Mart Stores on retail Wages and Benefits (Dec. 2007); Kenneth E. Stone & Georgeanne M. Artz, *The Impact of "Big Box" Building Materials Stores on Host Towns and Surrounding Counties in a Midwestern State*, *presented at* Annual Meeting of Agricultural & Applied Economics Association (Aug. 2001).

[23] *See* Carson Mencken & Charles M. Tolbert, *Restructuring of the Financial Industry and Implications for Sources of Start-Up Capital for New Businesses in Nonmetropolitan Counties*, 31(1) J. Rural Soc.Sci's. 71, 73 (2016) (finding that venture capital provided start-up financing to a *de minimis* percentage of rural businesses). *See also* Deborah Markley et al., Rural Policy Research Institute, Access to Capital in Rural America: Supporting Business Startup, Growth and Job Creation in the Wake of the Great Recession: Insights from the Field and Policy Recommendations 15 (Oct. 2012).

[24] "Large banks prefer to rely on 'hard' information and to use standardized, 'cookie cutter' criteria for approving loans because (1) it is difficult for loan officers at large banks to gather and transmit to senior executives' 'soft' information about small businesses, and (2) complex hierarchies within large banks create control problems that encourage senior executives to prescribe quantitative criteria that give very limited discretion to loan officers." Arthur E. Wilmarth, Jr., *A Two-Tiered System of Regulation Is Needed to Preserve the Viability of Community Banks and Reduce the Risks of Megabanks*, 2015 Mich. St. L. Rev. 249, 44 n. 157 (2015) (*citing* Allen N. Berger et al., *Does Function Follow Organizational Form? Evidence from the Lending Practices of Large and Small Banks*, 76 J. Fin. Econ. 237, 239-40, 242-43 (2005); Rebel A. Cole, Lawrence G. Goldberg & Lawrence J. White, *Cookie Cutter vs. Character: The Micro Structure of Small Business Lending by Large and Small Banks*, 39 J. Fin. & Quantitative Analysis 227, 229-30, 249 (2004); Scott E. Hein et al., *On the Uniqueness of Community Banks*, 90 Econ. Rev. 15, 18-20 (2005)); Deborah Markley et al., Rural Policy Research Institute, Access to Capital in Rural America: Supporting Business Startup, Growth and Job Creation in the Wake of the Great Recession: Insights from the Field and Policy Recommendations 7 (Oct. 2012). Small businesses in rural communities are more likely than a typical small business to be "hard information-deficient" because they are typically smaller and have difficulty valuating their fixed investments and specialized assets in "thin" local re-sale markets. *See* Robert Deyoung et al., *Small Business Lending and Social Capital: Are Rural Relationship Different?*, 21(1) J. Entrepreneurial Fin. 99, 101 (2019).

[25] *See* Charles M. Tolbert et al., *Restructuring of the Financial Industry: The Disappearance of Locally Owned Traditional Financial Services in Rural America*, 79(3) Rural Soc. 355, 360 (2014); Craig W. Carpenter et al., *Locally owned Bank Concentration and Business Start-Ups and Closures in U.S. Metropolitan, Micropolitan, and Rural Counties from 1980-2010*, 50 Rev. Reg'l Stud. 17 (2020); F. Carson Mencken & Charles M. Tolbert, *Locally Owned Bank Concentration and Bank Loans for Nonmetropolitan Business Start-Ups and Expansions: A Multilevel Analysis from the 2007 Survey of Business Owners*, 83(2) Rural Soc. 376 (2018). *See also* The Center for Rural Pennsylvania, Challenges and Opportunities for Community banks in Rural Pennsylvania 10 (Jan. 2010) ("According to the 2003 Survey of Small Business Finances (SSBF), the banking sector is the most important institutional supplier of credit to small firms in the US. This is particularly true in rural areas, where the majority of small firms use traditional bank credit to fund the ongoing operation and expansion of their businesses.") (internal citations omitted).

[26] *See* FDIC, FDIC Community Banking Study (December 2020) 4-13, 14, 16-18 (2020).

[27] Loan officers at small, local banks tend to have longer tenures, are "embedded" in their communities, and can draw upon their extensive local networks to gain a wealth of "soft" information about a borrower's character, reputation, and business prospects. *See* Charles M. Tolbert et al., *Restructuring of the Financial Industry: The Disappearance of Locally Owned Traditional Financial Services in Rural America*, 79(3) Rural Soc. 355, 360-61 (2014); Scott E. Hein et al., *On the Uniqueness of Community Banks*, 90 Econ. Rev. 15, 18-20 (2005); Rebel A. Cole, Lawrence G. Goldberg & Lawrence J. White, *Cookie Cutter vs. Character: The Micro Structure of Small Business Lending by Large and Small Banks*, 39 J. Fin. & Quantitative Analysis 227, 229-30, 249 (2004). Working in smaller, "flatter" organizations, they also have the discretion to act on this "soft" information in making loan decisions, whereas loan officers at larger, multi-establishment banks must

follow "hard" asset, portfolio, and data policies and procedures promulgated by corporate headquarters. *See* Allen N. Berger et al., *Does Function Follow Organizational Form? Evidence from the Lending Practices of Large and Small Banks*, 76 J. FIN. ECON. 237 (2005); Kenneth P. Brevoort & Timothy H. Hannan, *Commercial Lending and Distance: Evidence from Community Reinvestment Act Data*, FEDS Working Paper No. 2004-24 (Feb. 2004); Robert Deyoung et al., *Borrower-Lender Distance, Credit Scoring, and Loan Performance: Evidence for Informational-Opaque Small Business Borrowers*, 17 J. FIN. INTERMEDIATION 113 (2008); James A. Brickley et al., *Boundaries of the Firm: Evidence from the Banking Industry*, 70 J. FIN. ECON. 351 (2003). Even when small banks do use hard information to assess the creditworthiness of small busines firms, they tend to use the consumer credit score of the business owner, not the more encompassing (and difficult to build) business credit score used by large banks. *See* Allen N. Berger et al., *The Surprising Use of Credit Scoring in Small Business Lending by Community Banks and the Attendant Effects on Credit Availability, Risk and Profitability*, 39 J. FIN. SERV. 1 (2011). This locally-oriented, relational approach to lending has been linked to lower interest rates, reduced collateral requirements, and increased credit availability for small businesses. *See* Allen N. Berger & Gregory F. Udell, *Small Business Credit Availability and Relationship Lending: The Importance of Bank Organization Structure*, 112 ECON. J. 32 (2002); Allen N. Berger & Gregory F. Udell, *Relationship Lending and Lines of Credit in Small Firm Finance*, 68 J. BUS. 351 (1995). *Cf.* Atul Ashok Teckchanda, *Building a Better Community? The Role of Banks and Voluntary Associations*, (Ph.D Dissertation, U.C. Berkeley) at 1 (Fall 2010) (finding that "the contribution of locally-owned banks that have all their branches in the focal community to employment growth [increases] with the number of businesses with low levels of tangible assets relative to total assets.").

[28] *See* Ruth Simon & Coulter Jones, *Goodbye, George Bailey: Decline of Rural Lending Crimps Small-Town Business*, WALL STREET J. (Dec. 25, 2017) ("The value of small loans to businesses in rural U.S. communities peaked in 2004 and is less than half of what it was then in the same communities, when adjusted for inflation, according to a Wall Street Journal analysis of Community Reinvestment Act data. In big cities, small loans to businesses fell only a quarter during the same period, mainly due to large declines in lending activity during the financial crisis. Adjusted for inflation, rural lending is below 1996 levels.").

[29] *See* Julapa Jagtiani & Raman Quinn Maingi, *How Important Are Local Community Banks to Small Business Lending? Evidence from Mergers and Acquisitions*, Fed. Res. Bank of Phila., Working Paper No. 18-18, 18-20 (2018) (showing that acquisitions of locally-owned community banks by out-of-county institutions caused small business lending to decline in the county of the target bank by $1-3.35 million for each 10 percent increase in the market share of the target bank in the overall small business lending in the county before the merger); Hoai-Luu Q. Nguyen, *Are Credit Markets Still Local? Evidence from Bank Branch Closings*, 11(1) AM. ECON. J. APPLIED ECON. 1, 3 (2019) (showing that bank mergers "lead to a sharp and persistent decline in credit supply to local small businesses" in affected census tracts, with annual tract-level small business loan originations declining by an average $453,000, off a baseline average of $4.7 million); Allen N. Berger et al., *The Effects of Bank Mergers and Acquisitions on Small Business Lending*, 50 J. FIN. ECON. 187, 217, 222 (1998) (finding that mergers involving large banks between 1977 and 1992 were associated with decreases in small business lending); Steven G. Craig & Pauline Hardee, *The Impact of Bank Consolidation on Small Business Credit Availability*, 31 J. BANKING & FIN. 1237, 1248-58 (2007) (concluding that bank consolidation has reduced credit availability for small businesses); Paola Sapienza, *The Effects of Banking Mergers on Loan Contracts*, 68 J. FIN. 329, 364 (2002) (finding that acquisitions by large banks decrease the supply of loans to small businesses).

[30] *See* ECONOMIC INNOVATION GROUP, DYNAMISM IN RETREAT: CONSEQUENCES FOR REGIONS, MARKETS, AND WORKERS 22 (Feb. 2017).

[31] *See* Craig W. Carpenter et al., *Locally Owned Bank Concentration and Business Start-Ups and Closures in U.S. Metropolitan, Micropolitan, and Rural Counties from 1980-2010*, 50(1) REV. REG'L STUD. 17 (2020); F. Carson Mencken & Charles M. Tolbert, *Locally Owned Bank Concentration and Bank Loans for Nonmetropolitan Business Start-Ups and Expansions: A Multilevel Analysis from the 2007 Survey of Business Owners*, 83(2) RURAL SOC. 376 (2018); Tessa Conroy et al., *Fueling Job Engines: Impacts of Small Business Loans on Establishment Births in Metropolitan and Nonmetro Counties*, 35(3) CONTEMP. ECON. POL'Y 578 (2017) (finding that the aggregate level and annual rate of increase in local small business lending has a "positive effect on the establishment birth rate that is strongest in nonmetropolitan counties."). *See also* Jeremy C. Kress, *Modernizing Bank Merger Review*, 37 YALE J. REG. 435, 460 (2020) (citing Bill Francis et al., *Bank Consolidation and New Business Formation*, 32 J. BANKING & FIN. 1598, 1603-09 (2008)); Nicola Cetorelli & Philip E. Strahan, *Finance as a Barrier to Entry: Bank Competition and Industry Structure in Local U.S. Markets*, NBER Working Paper No. 10832 (2004) ("The empirical evidence . . . strongly supports the idea that, in [local] markets with concentrated banking, potential entrants face greater difficulty gaining access to credit than in markets where banking is more competitive.").

[32] *See* Allen N. Berger et al., Does *Function Follow Organizational Form? Evidence from the Lending Practices of Large and Small Banks*, 76 J. FIN. ECON. 237, 239-40, 242-43 (2005) (finding that "an increase in [lender] bank size from the 25th percentile to the 75th percentile raises the fraction of trade credit that is paid late [by a small business borrower] by 17 percentage points, from 26 percent to 43 percent" and stating "the bottom line is that firms that are forced to borrow from large banks appear to be substantially more credit constrained than those that can borrow from small banks"); Paola Sapienza, *The Effects of Banking Mergers on Loan Contracts*, 68 J. FIN. 329, 364 (2002)

(finding that acquisitions by large banks increase the cost of credit for small businesses); Mark J. Garmaise & Tobias J. Moskowitz, *Bank Mergers and Crime: The Real and Social Effects of Credit Market Competition*, 61 J. FIN. 495, 509-14 (2006) (finding that mergers among banks with at least $1 billion in assets between 1992 and 1999 increased interest rates on loans).

[33] *See* Tessa Conroy et al., *It's a Wonderful Loan: Local Financial Composition, Community Banks, and Economic Resilience*, 126 J. BANKING & FIN. 1, at 9, tbl. 3 (2020); W. Scott Langford & Maryann Feldman, *We Miss You George Bailey: The Effects of Local Banking Conditions on the County-Level Timing of the Great Recession,* SSRN No. 3501746 (2019) (unpublished manuscript). *See also* OLUGBENGA AJILORE, CENTER FOR AMERICAN PROGRESS, ECONOMIC RECOVERY AND BUSINESS DYNAMISM IN RURAL AMERICA (2020) (finding that "nearly all rural communities" fell behind metropolitan communities in the recovery of business growth following the Great Recession, with many rural communities experiencing negative business growth through 2014); DEBORAH MARKLEY ET AL., RURAL POLICY RESEARCH INSTITUTE, ACCESS TO CAPITAL IN RURAL AMERICA: SUPPORTING BUSINESS STARTUP, GROWTH AND JOB CREATION IN THE WAKE OF THE GREAT RECESSION: INSIGHTS FROM THE FIELD AND POLICY RECOMMENDATIONS 6 (Oct. 2012). *Cf.* FDIC, FDIC COMMUNITY BANKING STUDY (DECEMBER 2020) 4-16 (2020) (finding agricultural specialist community banks, which are predominantly small rural institutions, "tend[] to the credit needs of many small and mid-sized farmers" and "are highly committed to meeting those farmers' credit needs even during periods of agricultural stress beyond their borrowers' control", particularly by "cooperatively working with their borrowers to restructure operating shortages" during downturns).

[34] *See* FDIC, FDIC COMMUNITY BANKING STUDY (DECEMBER 2020) 4-2, 3-4 (2020). In all communities, the market for small commercial real estate loans is highly localized due to information and agency considerations. *See* Mark J. Garmaise & Tobias J. Moskowitz, *Confronting Information Asymmetries: Evidence from Real Estate Markets*, 17 REV. FIN. STUD. 405 (2004); Mark J. Garmaise & Tobias J. Moskowitz, *Informal Financial Networks: Theory and Evidence*, 16 REV. FIN. STUD. 1007 (2003).

[35] *See* THE CENTER FOR RURAL PENNSYLVANIA, CHALLENGES AND OPPORTUNITIES FOR COMMUNITY BANKS IN RURAL PENNSYLVANIA at 10 (Jan. 2010) ("On average, more than 60 percent of all assets of rural community banks [in Pennsylvania] consist of loans made predominantly for real estate purposes . . . The corresponding figure for the larger national banks, or those with more than $1 billion in assets, was about 27 percent. This implies that community banks' fortunes are tied closely to their local economies.").

[36] *See* Mark J. Garmaise & Tobias J. Moskowitz, *Bank Mergers and Crime: The Real and Social Effects of Credit Market Competition*, 61 J. FIN. 495, 516-17 (2006); KRISTIAN BLICKLE, FEDERAL RESERVE BANK OF NEW YORK, LOCAL BANKS, CREDIT SUPPLY, AND HOUSE PRICES (Nov. 2018) (finding that "local-mortgage-oriented banks affect house prices through the supply of credit and that bank specialization thereby plays an important role in the allocation of capital across sectors.").

[37] *See* Giovanni Favara & Mariassunta Giannetti, *Forced Asset Sales and the Concentration of Outstanding Debt: Evidence from the Mortgage Market*, 72(3) J. FIN. 1081 (2017) (finding that, as the concentration of outstanding mortgages on a lender's balance sheet in a zip code increases, the zip code area experiences up to 40 percent less home foreclosures by the lender and up to 22 percent lower rate of home price declines during a recession). *See also* Kathy Fogel, *Have Community Banks Reduced Home Foreclosure Rates?*, 35 J. BANKING & FIN. 2498 (2011).

[38] *See* Mark J. Garmaise & Tobias J. Moskowitz, *Bank Mergers and Crime: The Real and Social Effects of Credit Market Competition*, 61 J. FIN. 495, 512-13 (2006).

[39] *See* Mark J. Garmaise & Tobias J. Moskowitz, *Bank Mergers and Crime: The Real and Social Effects of Credit Market Competition*, 61 J. FIN. 495, 514-16 (2006).

[40] *See* Arthur E. Wilmarth, Jr., *Too Big to Fail, Too Few to Serve? The Potential Risks of Nationwide Banks*, 77 IOWA L. REV. 957, 1045-46 (1992) (citing Constance Dunham, *Interstate Banking and the Outflow of Local Funds*, NEW ENG. ECON. REV. (Fed. Res. Bank of Boston) at 9, 11, 12-13 (Mar.- Apr. 1988)).

[41] *See* Arthur E. Wilmarth, Jr., *Too Big to Fail, Too Few to Serve? The Potential Risks of Nationwide Banks*, 77 IOWA L. REV. 957, 1046-47 (1992) (citing Staff Report to the H. Comm. On Banking, Finance and Urban Affairs, 102d Cong., 2d Sess., Analysis of Banking Industry Consolidation Issues at 5-8 (Mar. 2, 1992)). *See also* Ruth Simon & Coulter Jones, *Goodbye, George Bailey: Decline of Rural Lending Crimps Small-Town Business,* WALL STREET J. (Dec. 25, 2017) ("'To say that I am concerned is an understatement,' says Ray Grace, North Carolina commissioner of banks. The number of community banks is shrinking, and larger banks are taking deposits gathered in rural areas and deploying them in urban communities, he says. 'It sucks the capital out of rural communities.'").

[42] *See* PARTNERS FOR RURAL TRANSFORMATION, UNLOCKING THE COMMUNITY REINVESTMENT ACT'S POTENTIAL TO ENSURE PERSISTENT PROSPERITY IN RURAL AMERICA 3 (Oct. 15, 2021) ("In the absence of branches [in rural areas], large bank Community Reinvestment Act assessment areas fail to reach into these communities—limiting another source of capital for redevelopment. As

currently structured, absent a physical location in the community, a bank has no obligation to lend or invest there. This means communities in banking deserts have a harder time attracting the resources needed to finance community needs such as affordable housing, hospitals, museums, or other job-creating activities.").

[43] *See* PARTNERS FOR RURAL TRANSFORMATION, UNLOCKING THE COMMUNITY REINVESTMENT ACT'S POTENTIAL TO ENSURE PERSISTENT PROSPERITY IN RURAL AMERICA 3 (Oct. 15, 2021); *see also* Fahe, Comment to the Federal Reserve Board of Governors on Community Reinvestment Act Regulations (Feb. 2021).

[44] *See* ECONOMIC RESEARCH SERVICE, USDA, FINANCIAL MARKET INTERVENTION AS A RURAL DEVELOPMENT STRATEGY, 3-4 (Dec. 1990) (noting that "rural banks" were "the primary source of capital to small rural businesses and governments" and "have historically been strong supporters of the tax-exempt bond market in general and of their local government's bond issues in particular," specifically because "the benefits of supporting their community's local economy create[d] a demand for locally-issued government bonds"); PATRICK J. SULLIVAN, ECONOMIC RESEARCH SERVICE, USDA, THE COST OF METRO AND NONMETRO GOVERNMENT BORROWING iii, 6-16 (1983). *See also* PATRICK J. SULLIVAN, ECONOMIC STATISTICAL SERVICE, USDA*,* BANK SUPPORT OF MUNICIPAL BONDS CRITICAL TO RURAL DEVELOPMENT, 3 RURAL DEV. PERSP. 32-5 (Oct. 1980); Clifford Rossi, *Rural Tax-Exempt Financing Weathers Tax Reform*, 6(2) RURAL DEV. PERSP. 18 (1990).

[45] *See* Ivy M. Washington & William T. Wisser, *Municipal Lending at Community Banking Organizations—Emerging Risks?*, 2014(2) COMMUNITY BANKING CONNECTIONS: FEDERAL RESERVE SYSTEM 14, 15, Figs. 1, 2 (2014).

[46] *See* Ivy M. Washington & William T. Wisser, *Municipal Lending at Community Banking Organizations—Emerging Risks?*, 2014(2) COMMUNITY BANKING CONNECTIONS: FEDERAL RESERVE SYSTEM 14, 15, Figs. 1, 2 (2014).

[47] In municipal bond issuances, both sellers (governments) and buyers (investors) must rely on the intermediating dealer (also called an "underwriter") for information about market conditions and appropriate bond pricing, giving underwriters informational advantages they can exploit in a variety of ways to reap additional profits at the expense of issuers and investors. *See* Michele Pau, *Trust issues in Bond Markets*, FIDERES (Mar. 4, 2019) (summarizing potential forms of market manipulation by bond underwriters). Research suggests the municipal bond underwriting industry is exceedingly concentrated, particularly at the regional level, with significant indications of market splitting and collusion between dominant firms. *See* Dario Cestau, *Competition and Market Concentration in the Municipal Bond Market*, SSRN No. 3497599, 15-19 (June 11, 2019) (unpublished manuscript). Collusion and market manipulation in the industry have been the subject of extensive litigation, and research by watchdog organizations has found widespread evidence of exploitative mispricing by major underwriters. *See* Michele Pau, *Trust issues in Bond Markets*, FIDERES (Mar. 4, 2019); Liz Farmer, *Cities and Pension Funds Are Suing Big Banks (Again)*, GOVERNING (Apr. 4, 2019); Dario Cestau, *Competition and Market Concentration in the Municipal Bond Market*, SSRN No. 3497599, at 15-19 (June 11, 2019) (unpublished manuscript) ("In February 2019, the City of Philadelphia filed an antitrust lawsuit against seven major banks where it accused them of secretly colluding and manipulating interest rates of variable-rate demand obligations . . . Similar lawsuits have also been filed on behalf of the states of California, Illinois, Massachusetts, and New York.").

[48] *See generally Rural Distress and the Concentration of Financial and Economic Power: Hearing on An Economy that Works for Everyone: Investing in Rural Communities Before S. Comm. on Banking, Housing, and Urban Affairs*, 117th Cong. 2 (Apr. 20, 2021) (Testimony of Stacy Mitchell, Co-Executive Director, Institute for Local Self-Reliance). *See also, e.g.*, MARY K. HENDRICKSON ET AL., FAMILY FARM ACTION ALLIANCE, THE FOOD SYSTEM: CONCENTRATION AND ITS IMPACTS (Nov. 2020) (on consolidation in food systems); CLAIRE KELLOWAY & SARAH MILLER, OPEN MARKETS INSTITUTE, FOOD AND POWER: ADDRESSING MONOPOLIZATION IN AMERICA'S FOOD SYSTEM (March 2019) (same); JAMES M. MACDONALD, ROBERT A. HOPPE & DORIS NEWTON, ECONOMIC RESEARCH SERVICE, USDA, THREE DECADES OF CONSOLIDATION IN U.S. AGRICULTURE (Mar. 2018) (on consolidation in agricultural production); BRIAN ALEXANDER, THE HOSPITAL: LIFE, DEATH, AND DOLLARS IN A SMALL AMERICAN TOWN (2021) (on consolidation in rural healthcare); STACY MITCHELL, INSTITUTE FOR LOCAL SELF-RELIANCE, WALMART'S MONOPOLIZATION OF LOCAL GROCERY MARKETS (June 2019) (on consolidation in rural grocery markets). *Cf.* Sarah Miller & Austin Frerick, *Democrats Can Win Back Rural America, But First They Need to Understand What Bled it Dry*, BUZZFEED NEWS (Nov. 28, 2018); Lillian Salerno, *Want to Rescue Rural America? Bust Monopolies.*, WASH. POST (Apr. 20, 2017).

[49]*See Rural Distress and the Concentration of Financial and Economic Power: Hearing on An Economy that Works for Everyone: Investing in Rural Communities Before S. Comm. on Banking, Housing, and Urban Affairs*, 117th Cong., 2d Sess., at 6-11 (Apr. 20, 2021) (Testimony of Stacy Mitchell, Co-Executive Director, Institute for Local Self-Reliance). (explaining how consolidation drives business atrophy in a variety of economic sectors in rural communities); *Id.* at 11-14 (discussing how consolidation drives capital disinvestment in rural communities). *See also* ZEPHYR TEACHOUT, BREAK 'EM UP: RECOVERING OUR FREEDOM FROM BIG AG, BIG TECH, AND BIG MONEY 17-27 (2020); RAFTER FERGUSON, UNION OF CONCERNED SCIENTISTS, LOSING GROUND: FARMLAND CONSOLIDATION AND THREATS TO NEW AND BLACK FARMERS AND THE FUTURE OF FARMING (Apr. 2021). Retail chains and big-box stores are often considered paradigmatic of the

"extractive corporate enterprises" that have displaced locally-owned trading and production businesses in rural America. *See* STACY MITCHELL, BIG-BOX SWINDLE: THE TRUE COST OF MEGA-RETAILERS AND THE FIGHT FOR AMERICA'S INDEPENDENT BUSINESSES 3-73, 127-163 (2006); Mya Frazier, *Dollar General Hits a Goldmine in Rural America,* BLOOMBERG BUSINESSWEEK (Oct. 11, 2017); STACY MITCHEL & MARIE DONAHUE, INSTITUTE FOR LOCAL SELF-RELIANCE, DOLLAR STORES ARE TARGETING STRUGGLING URBAN NEIGHBORHOODS AND SMALL TOWNS. ONE COMMUNITY IS SHOWING HOW TO FIGHT BACK. (Dec. 2018); Rachel Quednau, *Big Box Stores are Costing Our Cities Far More Than We Ever Imagined*, STRONG TOWNS (Nov. 7, 2017). But large manufacturing, logistics, and natural-resource enterprises frequently operate to extract community wealth in a variety of ways as well, including by (1) demanding cash incentives, tax abatements, or fiscally unsustainable infrastructure development; (2) paying local workers non-livable wages that result in workers requiring public assistance; and (3) saddling communities with unfunded public health and environmental externalities. *See, e.g.*, OLUGBENGA AJILORE & CAIUS Z. WILLINGHAM, CENTER FOR AMERICAN PROGRESS, THE MODERN COMPANY TOWN 6-11 (Sept. 2019); Lynn England & Ralph B. Brown, *Community and Resource Extraction in Rural America in* CHALLENGES FOR RURAL AMERICA IN THE TWENTY-FIRST CENTURY 317 (Brown, D., Swanson, L., ed. 2003); Pat Garofalo, *Rural America Gets Extra Hurt by Corporate Giveaways*, BOONDOGGLE (Apr. 17, 2020).

[50] *See generally* DON MACKE ET AL., E2 ENTREPRENEURIAL ECOSYSTEMS, THE NETWORK KANSAS FINANCIAL SYSTEM: A MODEL FOR OTHER REGIONS AND STATES 7 (AUG. 18, 2021); DON MACKE, E2 ENTREPRENEURIAL ECOSYSTEMS, ENTREPRENEURIAL ECOSYSTEM BUILDING IN RURAL AMERICA: FOUR DECADES OF LEARNING (June 2020). *See also* ENTREWORKS CONSULTING ET AL., ENTREPRENEURIAL ECOSYSTEMS IN APPALACHIA: LITERATURE REVIEW (Nov. 2018) (report prepared for the Appalachian Regional Commission). *See also* MICHAEL J. PIORE & CHARLES F. SABEL, THE SECOND INDUSTRIAL DIVIDE: POSSIBILITIES FOR PROSPERITY (1984) (describing how networks of small businesses, self-employed workers, and other community leaders enabled small producers in rural American communities of the 1970s and 1980s to compete effectively against larger firms).

[51] *See* Craig W. Carpenter et al., *Locally owned Bank Concentration and Business Start-Ups and Closures in U.S. Metropolitan, Micropolitan, and Rural Counties from 1980-2010*, 50 REV. REG'L STUD. 17, 34-35 (2020). *See also* Michael Irwin *et al.*, *There's No Place Like Home: Nonmigration and Civic Engagement*, 31(12) Environment & Planning 2223 (1999); Matthew R. Lee, *Civic Community in the Hinterland: Toward a Theory of Rural Social Structure and Violence*, 46(2) Criminology 447 (2008); Troy C. Blanchard, *The Health and Wealth of US Counties: How the Small Business Environment Impacts Alternative Measures of Development*, 5(1) Cambridge J. Regions, Econ. & Soc. 149 (2011).

[52] *See generally* Marc Edelman, *Hollowed Out Heartland, USA: How Capital Sacrificed Communities and Paved the Way for Authoritarian Populism*, 82 J. RURAL STUD. 505, 510-13 (2019); *see also* Troy C. Blanchard, Carson Mencken & Charles Tolbert, *The Health and Wealth of US Counties: How the Small Business Environment Impacts Alternative Measures of Development*, 5(1) CAMBRIDGE J. REGIONS, ECON. & SOC. 149 (2012); Thomas A. Lyson et al., *Civic Community in Small-Town America: How Civic Welfare Is Influenced by Local Capitalism and Civic Engagement*, 67(1) RURAL SOC. 90 (2002); Thomas A. Lyson et al., *Local Capitalism, Civic Engagement and Socioeconomic Well-Being*, 77(2) SOC. FORCES 401 (1998). For the effects of grocery and retail consolidation on social capital, civic capacity, and other aspects of community wellbeing, *see* STACY MITCHELL, BIG-BOX SWINDLE: THE TRUE COST OF MEGA-RETAILERS AND THE FIGHT FOR AMERICA'S INDEPENDENT BUSINESSES 73-127 (2006); Stephan J. Goetz & Anil Rupasingha, *Wal-Mart and Social Capital*, 88(5) AM. J. AGRIC. ECON. 1304 (2006). For the effects of agricultural consolidation, *see* FOODPRINT, THE ECONOMICS OF FOOD AND CORPORATE CONSOLIDATION (Oct. 2018); CURTIS W. STOFFERAHN, UNIVERSITY OF NORTH DAKOTA, INDUSTRIALIZED FARMING AND ITS RELATIONSHIP TO COMMUNITY WELL-BEING (Sept. 2006) (report prepared for State of North Dakota). For a broader discussion of the effect of corporate delocalization on social capital in American communities, *See* Charles H. Heying, *Civic Elites and Corporate Delocalization: An Alternative Explanation for Declining Civic Engagement*, 40(5) AM. BEHAV'L SCI. 657 (1997).

[53] For discussions of the importance of locally-owned banks as sources of philanthropy and civic leadership for community-based charitable and social organizations, *see* Richard M. Brunell, *The Social Costs of Mergers: Restoring "Local Control" as a Factor in Merger Policy*, 85 N.C. L. REV. 149, 151-55, 214-20 (2006); Peter C. Carstensen, *Public Policy Toward Interstate Bank Mergers: The Case for Concern*, 49 OHIO ST. L.J. 1397, 1425 (1989); *see also* Josh Adams, *Local Banks a Key Part of Community*, TENNESSEAN (Feb. 9, 2012) at 1, available at 2012 WLNR 2799130 (describing the importance of community banks and their managers and directors as supporters and leaders of local charities and community groups); Kalen Holliday, *Building Communities: One Bank at a Time*, SAVINGS & COMM. BANKER (Oct. 1, 2004) at 52, available at 2004 WLNR 15911752 (reporting results of a survey showing that "[n]early all community banks donate time, money, or both to their communities," with most community banks supporting more than ten nonprofit or community organizations). Large, absentee-owned banks that acquire community banks are less likely to provide comparable support to local nonprofits because those banks tend to give most of their backing either to nonprofits located in their headquarter cities or to larger statewide and national organizations. *See* Richard M. Brunell, *The Social Costs of Mergers: Restoring "Local Control" as a Factor in Merger Policy*, 85 N.C. L. REV. 149, 151-55, 214-15 (2006); Peter C. Carstensen, *Public Policy Toward Interstate Bank Mergers: The Case for Concern*, 49 OHIO ST. L.J. 1397, 1425 (1989); *Cf.* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-71, FINANCIAL INSTITUTIONS: CAUSES AND CONSEQUENCES OF RECENT

BANK FAILURES 53 (2013) (describing views of state bank regulators and community banking institutions that large, absentee-owned banks which acquire failed community banks are unlikely to provide comparable support to local nonprofits). Consistent with these descriptions of locally-owned banks' involvement in the civic life of their communities, recent research has shown that the increased presence of purely local banks in a community enhances the contribution of business, professional, social advocacy, religious, and civic associations to local organizing capacity and business formation. *See* Atul Ashok Teckchanda, *Building a Better Community? The Role of Banks and Voluntary Associations*, (Ph.D. Dissertation, U.C. Berkeley), at 1 (Fall 2010). *See also* DEBORAH MARKLEY ET AL., RURAL POLICY RESEARCH INSTITUTE, ACCESS TO CAPITAL IN RURAL AMERICA: SUPPORTING BUSINESS STARTUP, GROWTH AND JOB CREATION IN THE WAKE OF THE GREAT RECESSION: INSIGHTS FROM THE FIELD AND POLICY RECOMMENDATIONS 9 (Oct. 2012) (describing role of banks, credit unions, and microlenders as financial advisors for rural business startups).

54 *See* Craig W. Carpenter et al., *Locally owned Bank Concentration and Business Start-Ups and Closures in U.S. Metropolitan, Micropolitan, and Rural Counties from 1980-2010*, 50 REV. REG'L STUD. 17, 34-35 (2020).

55 The weight of empirical evidence suggests that any efficiencies from large bank mergers derive from implicit "too big to fail" subsidies, rather than any actual cost savings. *See* Robert DeYoung et al., *Mergers and Acquisitions of Financial Institutions: A Review of the Post-2000 Literature*, 36 J. FIN. SERVS. RES. 87, 96-97 (2009) (concluding that efficiency gains in large bank mergers derive from "too big to fail" subsidies rather than genuine cost savings); Erik Devos et al., *Efficiency and Market Power Gains in Bank Megamergers: Evidence from Value Line Forecasts*, 45 FIN. MGMT. 1011, 1029 (2016) (finding that mergers resulting in banks with more than $150 billion in assets do not produce efficiency gains). Indeed, numerous studies contest the existence of economies of scale in banking entirely. *See* Hulusi Ianoglu et al., *Analyzing Bank Efficiency: Are "Too-Big-To-Fail" Banks Efficient?, in* THE HANDBOOK OF POST CRISIS FINANCIAL MODELING 110, 113 (Emmanuel Haven et al., eds. 2016) (finding negative returns to scale among the fifty largest U.S. commercial banks); Richard Davies & Belinda Tracey, *Too Big to Be Efficient? The Impact of Implicit Subsidies on Estimates Scale Economies for Banks*, 46 J. MONEY, CREDIT & BANKING 219, 243-44 (2014) (finding no evidence of economies of scale in BHCs with more than $50 billion in assets after controlling for the too-big-to-fail subsidy); Guohua Feng & Xiaohui Zhang, R*eturns to Scale at Large Banks in the US: A Random Coefficient Stochastic Frontier Approach*, 39 J. BANKING & FIN. 135, 144 (2014) (concluding that 90% of U.S. commercial banks with more than $1 billion in assets do not experience economies of scale); David A. Becher et al., *Interstate Banking Deregulation and the Changing Nature of Bank Mergers*, 28 J. FIN. RES. 1, 15 (2005) (finding that bank mergers in the post-deregulation 1990s resulted in more than $10 billion in wealth destruction); Paul A. Pautler, *Evidence on Mergers and Acquisitions*, 48 ANTITRUST BULLETIN 119, 159 (2003) (reviewing studies on bank mergers and concluding that "[t]he weakness of the evidence regarding beneficial cost efficiency effects . . . is a bit . . . surprising . . . given the received wisdom in the literature that banks generally are not very efficient"); GARY A. DYMSKI, THE BANK MERGER WAVE: THE SOCIAL AND ECONOMIC CONSEQUENCES OF FINANCIAL CONSOLIDATION 16 (1999) ("The economic literature shows that megabanks do not have greater operating efficiency than middle-sized banks. According to most studies, advantages due to size—economies of scale—disappear once a bank reaches about $250 million in assets. A few studies show small efficiencies in bank sizes of up to $3 billion in assets, and one has claimed small efficiencies of under 5 percent when banks have up to $50 billion in assets."). A recent applied analysis of economies of scale among community banks conducted by the FDIC supports this view, finding that, once a bank's loan portfolio has reached approximately $300 million, it has achieved 90 percent of the potential efficiencies of increased scale. *See* FDIC, STEFAN JACEWITZ ET AL., REP. NO. 2020-06 ECONOMIES OF SCALE IN COMMUNITY BANKS 1 (Dec. 2020). Moreover, there is significant evidence that bank executives do not pursue mergers to secure efficiencies, but primarily to grow market share, increase their own compensation, and entrench themselves in their positions. *See* Arthur E. Wilmarth Jr., *The Transformation of the U.S. Financial Services Industry, 1975-2000: Competition, Consolidation, and Increased Risks*, 2002 U. ILL. L. REV. 215, 279-300 (2002); *Arthur* E. Wilmarth, Jr., *Too Big to Fail, Too Few to Serve? The Potential Risks of Nationwide Banks*, 77 IOWA L. REV. 957, 1013-15 (1992); Zhian Chen et al., *The Impact of Bank Merger Growth on CEO Compensation*, 44 J. BUS. FIN. & ACCT. 1398, 1415 (2017) (concluding that CEO compensation is positively correlated with merger growth); Robert DeYoung et al., *Mergers and Acquisitions of Financial Institutions: A Review of the Post-2000 Literature*, 36 J. FIN. SERVS. RES. 87, 97 (2009).

56 We support the approach to merger review and antitrust enforcement announced in Assistant Attorney General Kanter's recent remarks to the New York State Bar Association Antitrust Section—particularly, in connection with merger reviews, that the Antitrust Division intends to "remain faithful to the plain language of the Clayton Act," ground merger review in "market realities," challenge mergers that "tend to create a monopoly" based on incipiency considerations, and favor "simple injunction[s] to block" unlawful mergers over partial divestitures and complex settlements. *See* Jonathan Kanter, Assistant Attorney General, Antitrust Division, Department of Justice, Remarks to the New York State Bar Association Antitrust Section (January 24, 2022).

57 The 1800/200 screen is highly permissive by historical standards. *See, e.g.*, Toby Roberts, *When Bigger Is Better: A Critique of the Herfindahl-Hirschman Index's Use to Evaluate Mergers in Network Industries*, 34 PACE L. REV. 894 (2014) (finding that, if the C-4 ratios of the 1968 guidelines were converted to HHI ratios, a merger would ordinarily have been challenged if it increased HHI ratios for a given market

by 30-50 points, depending on pre-merger concentration). Indeed, according to a 1992 study, under an 1800/200 screen, bank mergers could serially occur without triggering a single Justice Department review (let alone challenge) until the largest number of banks in any local banking market is less than 6 and the average number of banks per market is less than 3. *See* Stephen Rhoades, *Consolidation of the Banking Industry and the Merger Guidelines*, 37 ANTITRUST BULLETIN 689 (1992) (conducting a "mechanical simulation of all horizontal (within-market) bank mergers that would be acceptable" under the "numerical merger guidelines" adopted by the Justice Department for pre-review merger screening and finding that "under the current guidelines, mergers would occur to the point that the largest number of banking organizations in any single market in the United States would be six and the average number per market would be three.").

[58] 15 U.S.C. § 18. A substantial literature on the anticompetitive effects of "conglomerate" mergers between firms in different markets was developed in the 1960s and is relevant in this context. *See* Thomas M. Hurley, *The Urge to Merge: Contemporary Theories on the Rise of Conglomerate Mergers in the 1960s*, 1(1) J. BUS. & TECH. L. 185 (2006). For an in-depth examination of the potential of a conglomerate merger to create market power and substantially lessen competition, *see* Corwin D. Edwards, *The Changing Dimensions of Business Power*, 44(5) ST. JOHN'S L. REV. 416 (1970). For an exposition of the statutory-text, legislative-history, and case-precedent bases for considering the preservation of local control as a factor in merger policy, *see* Richard M. Brunell, *The Social Costs of Mergers: Restoring "Local Control" as a Factor in Merger Policy*, 85 N.C. L. REV. 149, 185-196 (2006). We note that, although such allegedly "non-economic" considerations fell out of fashion in the 1980s, they were once at the center of antitrust enforcement policy. *See* Spencer W. Waller, *The Antitrust Legacy of Thurman Arnold*, 76 St. John's L. Rev. 569, 611-12 (2004) ("To his dying day, [Thurman] Arnold believed in a variety of non-economic justifications for antitrust as part of the attack on concentrated economic power in a democracy that was both inefficient and destroyed local business and drained away local capital."); Thurman Arnold, *The Economic Purpose of Antitrust Laws*, 26 Miss. L. J. 207, 208 (1955) ("The most significant evil at which the antitrust laws are aimed is the evil of absentee ownership and industrial concentration . . . [and] the first economic objective of the antitrust laws is to prevent the rise of absentee ownership—to encourage the export of capital to outlying areas instead of draining it off.").