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1251 AVENUE OF THE AMERICAS, 6TH FLOOR
NEW YORK, NY 10020
P 212 466-7700 | **TF** 800 635-6855
Piper Sandler & Co.
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Via Electronic Mail:

May 25, 2022

Federal Deposit Insurance Corporation
550 17th Street NW
Washington DC 20429

Attention:
Mr. James P. Sheesley
Assistant Executive Secretary
Attention: Comments-RIN 3064-ZA31

Re: Bank Merger Act Request for Information

Dear Mr. Sheesley,

On behalf of Piper Sandler & Co., I am responding to the Federal Deposit Insurance Corporation's ("FDIC") Request for Information ("RFI") regarding the effectiveness of the existing framework in meeting the requirements of the Bank Merger Act ("BMA").[1][2]

Piper Sandler is a market-leading, full-service investment banking firm and broker-dealer with a focus on the financial services sector along with several other sectors.[3] Our clients include almost a thousand banks and thrifts (together, "banks") and their holding companies. This letter has been prepared from the perspective of experienced practitioners in the financial sector at a 120-year-old firm that, with its clients, have navigated multiple periods of crisis and regulatory reform. We are currently ranked as the leading M&A financial advisory services for depository institutions and have been ranked #1 based on number of deals for the past ten years.[4] In addition, we have also consistently been among the top advisors for debt and equity capital raising for U.S. banks and their holding companies.

We understand that the FDIC is undertaking its review in light of significant consolidation in the banking sector, the requirement to consider financial stability risk under the BMA, the FDIC's responsibility for large bank resolution, and the recent Executive Order directing the U.S. Agencies to consider the impact of consolidation on competition and the welfare of workers, consumers, and small businesses. The FDIC is concerned that the existing BMA framework may no longer be effective in meeting the four key considerations of section 18(c) of the Federal Deposit Insurance Act in which the responsible regulatory agency cannot approve a proposed transaction that would substantially lessen competition, negatively impact the safety and soundness of the existing or combined institutions, negatively impact

[1] Please see Appendix A for an Overview of Current Bank Merger Review Methodology and Rationale.
[2] Please see Appendix B for a Glossary of Key Terms referred to in this document along with links to key source documents referenced in this comment letter.
[3] For further information on Piper Sandler: https://www.pipersandler.com/
[4] S&P Capital IQ M&A League table for the years 2012 – 2022 YTD, Data as of April 27, 2022.

the convenience and needs of the communities served, or increase risk to the stability of the U.S. banking and financial system. To solicit input on these concerns, the FDIC requested a response to numerous questions that we will address later in this letter.

From our perspective, the RFI suggests that the reduction in banks is due to uncontrolled M&A activity and the BMA needs to be updated to address and potentially limit such activity. However, as discussed more fully herein, there are multiple causes for bank concentration including healthy bank M&A, cyclical bank failures, and limited new bank formation. Even with this consolidation, the deposit market share of banks over $100 billion has remained constant around 64% since 2011. With the decline in number of banks, the U.S. still has 9x the number of banks per capita as our closest OECD peers.

The relatively limited number of large bank M&A deals since 2011 and dominance of GSIB purchases clearly demonstrate that buyers have limited interest in taking on the higher capital, liquidity, and other prudential risk management requirements associated with becoming an Advanced Approaches bank or GSIB. If these requirements were imposed on banks with more than $100 billion in assets but not classified as a GSIB, it would potentially have a chilling effect on non-GSIB large bank M&A. The perverse impact of this would be to further concentrate large bank M&A among the eight existing GSIBs in the U.S. or invite foreign GSIBs to pursue more growth in the U.S.

Banks face significant competition from non-banks and currently account for a much smaller percentage of lending relative to GDP than non-banks. Banks currently provide only about a quarter of the total financial sector debt and loans outstanding while non-banks and the government provide the remainder. The emergence of credit unions, non-banks and fintech lenders reinforce the competitive threat faced by the banks, but the existing tools to evaluate bank M&A deals are no longer accurate. These tools were developed around deposit market share based on branch location using HHI analysis which hardly make sense in today's market where most customers access their accounts through the internet or their phone. The initial Screen A of the HHI framework also does not consider lending and other banking services concentration.

These considerations highlight the need to update the mechanism to more accurately measure geographic and product competition under the BMA. However, to the extent that gathering the additional information such as credit union deposits or centrally booked deposits is determined to be impractical or cost prohibitive, an increase in the current HHI regulatory threshold of 1800 could be considered. This would acknowledge the high level of competition from credit unions, thrifts and centrally booked deposits without requiring the granular data to support the Screen A analysis.

With that overview, we have divided the remainder of this letter into sections: (i) bank concentration in the U.S., (ii) a comparison of global bank concentration, (iii) the competitive position of U.S. banks relative to non-banks, (iv) responses to the RFI questions, and (v) summary and recommendations.

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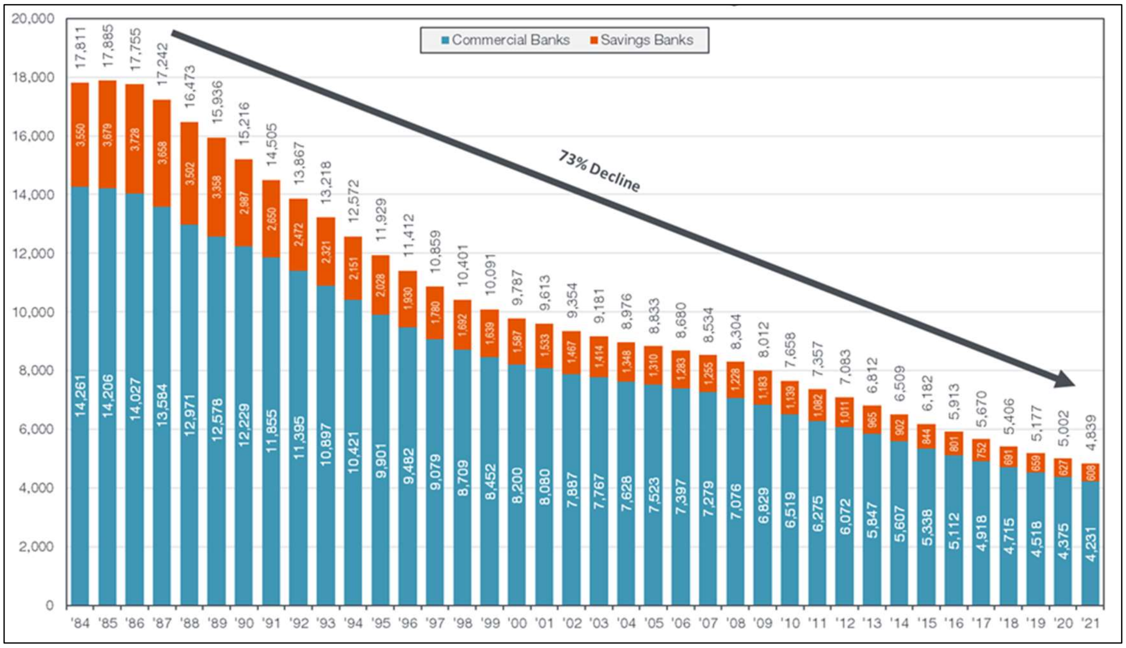
Bank Concentration in the U.S.

As shown below in Chart A, from 1984 to 2021 there has been a 73% decline in the number of banks and thrifts from 17,811 to 4,839.

Chart A

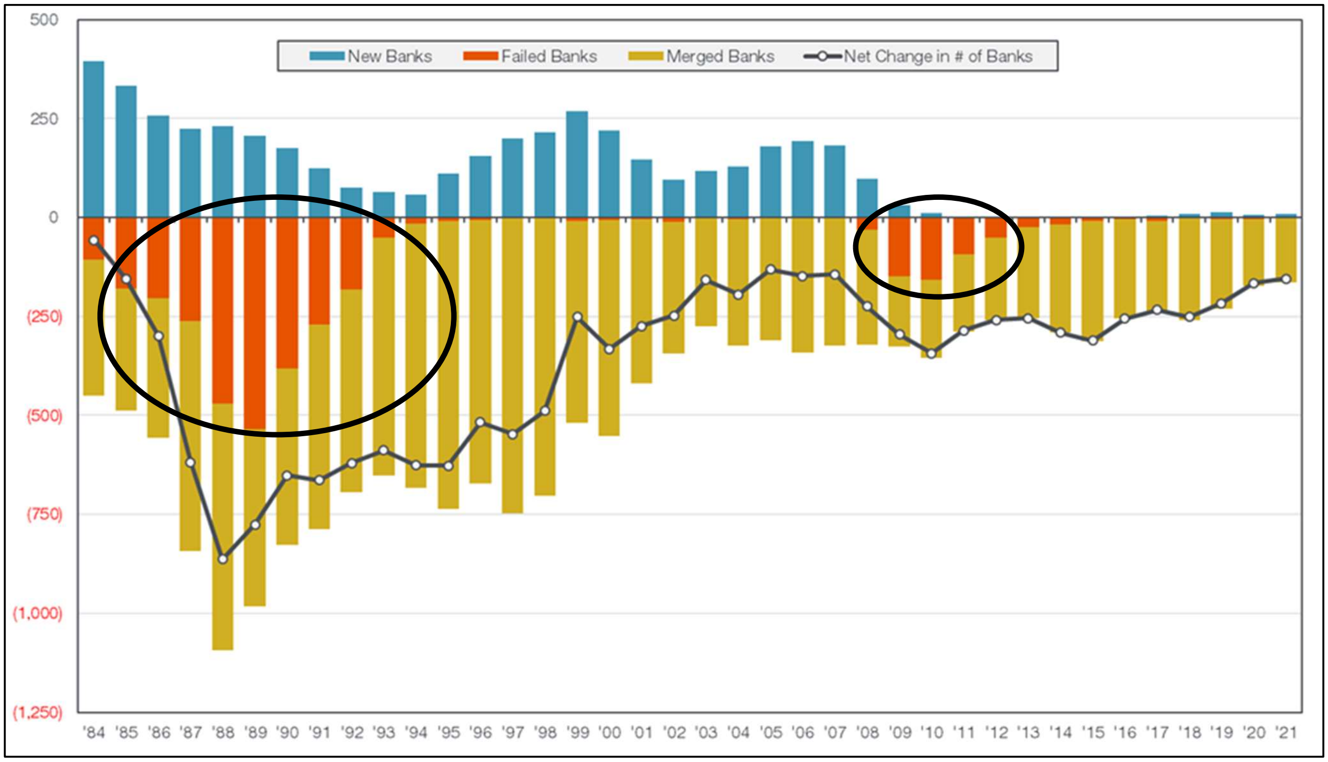
Number of FDIC Insured Commercial Banks & Savings Institutions



Source: FDIC

The 13,517 reduction in the number of U.S. banking charters was not caused solely by M&A activity but also by cyclical bank failures and limited new bank formation. As highlighted in Chart B, limited new bank formations also contributed significantly to this reduction in numbers of U.S. bank charters. During the period from 1984 to 2021, there were a total of 4,540 new charters granted. From an average of 137 new bank charters granted per year from 1984 to 2016, adding roughly 2,877 new banks during that period, there were only 39 new charters granted from 2011 to 2022. This dramatic reduction in new bank formations resulted from tighter standards by the FDIC in granting new charters and challenging economics for de novo banks. As a result, as banks were merged or succumbed to cyclical failure there were a limited number of new banks to take their place.

Chart B
Change in Number of US Bank Charters



Source: FDIC

Chart B also illustrates that cyclical bank failures during two periods in recent history (1984 to 1995 & 2008 to 2014) contributed significantly to the decline in number of bank charters. But the biggest increase in total deposit market share occurred between 2008 and 2010 with the failures of Washington Mutual and Wachovia and subsequent acquisitions by JP Morgan and Wells Fargo, respectively. These two transactions caused 10% deposit market share concentration for the top three financial institutions from approximately 25% of total deposits to 35% of total deposits. Since 2010 the deposit share market concentration for the top three banks has not changed materially.[5]

Lessons learned from these and other bank failures during the Great Financial Crisis of 2008 – 2010 led to the significant changes in capital, liquidity, and prudential risk management with the required implementation of Basel III capital and liquidity requirements along with the Dodd-Frank Act stress testing, TLAC and the GSIB capital buffers for the largest banks. Following these Basel III and DFA requirements beginning in 2010, there have been very few bank failures. This reinforces the effectiveness of these changes in capital, liquidity and prudential risk management practices post 2010. There has also been very little change in deposit market share held by large banks.

[5] "Large-Cap Banks - State of the Industry," Barclays Equity Research, Jason M. Goldberg, Inna Blyakher, Matthew Kesselhaut, and Brian Morton, March 18, 2022, page 67.

As shown below in Chart C, the percentage of total deposits held by banks with $100 billion or more in assets has remained constant at around 64% of total deposits since 2011.

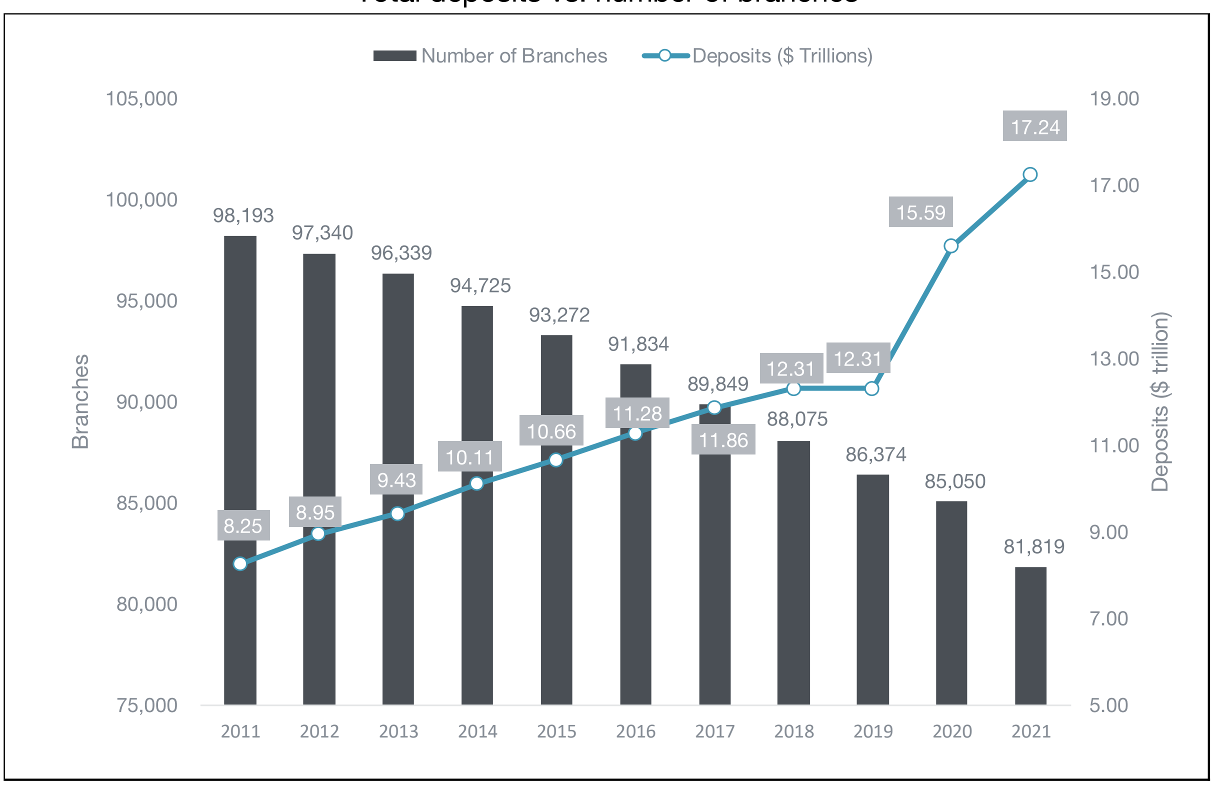
Chart C
Total Deposit Trends for Banks with over $100 Billion in Assets

($s in Billions)	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Banks > $100B	5,352	5,732	6,081	6,257	6,489	6,883	7,194	7,305	7,918	9,831	11,044
Total Deposits	8,250	8,950	9,430	10,110	10,660	11,280	11,860	12,310	12,310	15,590	17,240
% Total Deposits Held By Banks > $100 Billion	64.9%	64.0%	64.5%	61.9%	60.9%	61.0%	60.7%	59.3%	64.3%	63.1%	64.1%

Source: S&P Capital IQ

This stability in the deposit market share for the top 100 banks is noteworthy because as shown below in Chart D, since 2011, the number of branches declined 17% from 98,193 to 81,819 while deposits increased by 109% from $8.25 trillion to $17.24 trillion.

Chart D
Total deposits vs. number of branches



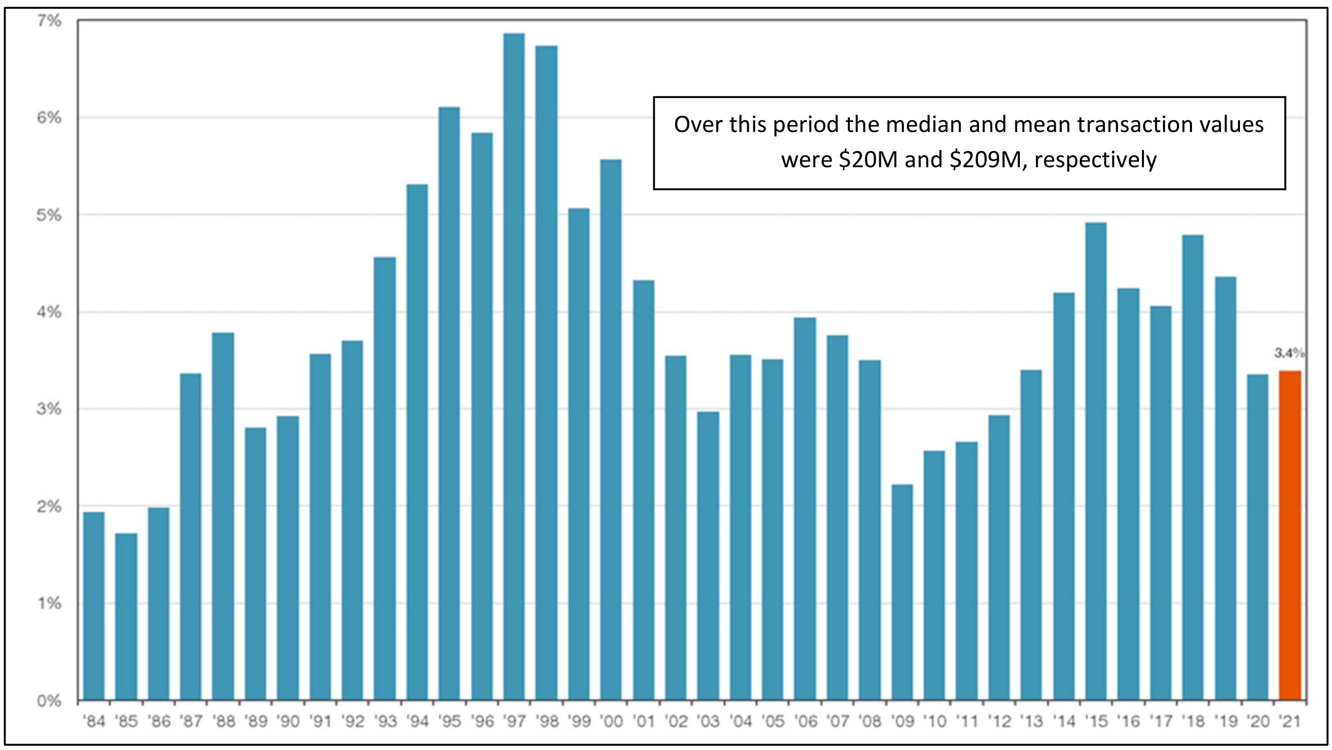
Note: Data for each year as of June 30th of each year as per FDIC Summary of Deposits data; includes all FDIC insured banks and thrifts in U.S. Territories

Source: FDIC Summary of Deposits filings

This apparent inconsistency is explained by the greater use of technology to access banking services. In a recent report, Barclays Equity Research estimates that 72% of Americans now access their bank accounts using the Internet or mobile phone vs. only 18% through branches and 5% via ATM.[6] Moreover, 97% of adults in the U.S. across a wide range of demographic groups own cell phones and 85% own smart phones. As such, 97% of the adult population in the U.S. can gain access to their bank accounts without needing access to a physical branch.[7]

As shown below in Chart E, the number of M&A deals as a percentage of total institutions has averaged 3% to 4% per year from 1984 to 2021 with a median and mean transaction value of $20M and $209M, respectively, during this period. Additionally, during this period 7,347 deals took place for an aggregate deal value of $1.538 trillion. Aside from the resolution of Washington Mutual and Wachovia previously noted, there was a very limited number of large bank combinations with total assets exceeding $100 billion.

Chart E
US Bank & Thrift M&A
Number of Deals as a % of Total Institutions



Source: S&P Capital IQ

[6] "Large-Cap Banks - State of the Industry," Barclays Equity Research, Jason M. Goldberg, Inna Blyakher, Matthew Kesselhaut, and Brain Morton, March 18, 2022, page 73.
[7] "Who Owns Cellphones and Smartphones," Pew Research Center, Survey of U.S. Adults Conducted January 25 – February 8, 2021, Report as of April 7, 2021.

In the eleven years since the adoption of Basel III and DFA requirements in 2010, there have only been 24 large bank deals with pro forma total assets greater than $100 billion. Chart F illustrates the breakdown in type of deals. These deals can be classified into four distinct groups:

GROUP A – Buyers and Sellers < $100 B: There were four deals totaling $10.9 billion in deal value and pro forma assets of $475.7 billion. Both buyer and seller had assets of less than $100 billion and combined to exceed $100 billion in assets. The fact that only 4 of 24 deals (17%) involved smaller banks combining to exceed $100 billion in assets reinforces the cost and difficulty of the additional disclosure and regulatory requirements for banking organizations as they pass the $100 billion threshold.

GROUP B - GSIB Buyers or Sellers: There were seven transactions representing $49.6 billion in deal value combining for pro forma total assets of $6,251 billion. Foreign or domestic GSIBs were the buyers or sellers in this group and these entities already comply with the disclosure, capital, liquidity, and other requirements for GSIBs. Group B deals comprised 37% of total deal value and pro forma assets.

Group C - Buyers and Sellers > $100 B: There were only two transactions where neither the buyer nor seller was a GSIB, but both were over $100 billion in assets. Group C deals totaled $39.9 billion in deal value and $1,006 billion in pro forma total assets representing about 30% of total deal value and 9% of pro forma total assets. These companies managed to complete large scale mergers while staying below the thresholds for becoming an Advanced Approaches Bank or a GSIB institution with the higher-level requirements for capital, liquidity, stress testing, TLAC, etc.

Group D – Buyer > $100 B and Seller < $100 B: This was the most active group with 11 transactions. Large bank buyers with more than $100 billion in assets acquired smaller banks with less than $100 billion in assets. These transactions were accomplished without the acquiring bank becoming an Advanced Approaches Bank or GSIB. This group represented $32 billion in deal value and $2,956 billion in pro forma assets or 24% and 28% of the total deal value and pro forma assets, respectively.

Chart F

Analysis of M&A Deals with Assets above $100 Billion since 2010

Group	Buyer	Ticker	Target	Ticker	Anounce. Date	Deal Value ($M)	Buyer Assets ($M)	Target Assets ($M)	Pro-Forma Assets
Group A	Buyer and Seller below $100 Billion in Assets								
	SVB Financial Group	SIVB	Boston Private Financial Holdings, Inc.	BPFH	1/4/2021	$943	$96,917	$10,049	$106,966
	First Citizens BancShares, Inc.	FCNC.A	CIT Group Inc.	CIT	10/16/2020	2,159	48,667	60,865	109,532
	KeyCorp	KEY	First Niagara Financial Group, Inc.	FNFG	10/30/2015	4,007	95,420	39,413	134,833
	M&T Bank Corporation	MTB	Hudson City Bancorp, Inc.	HCBK	8/27/2012	3,812	80,808	43,590	124,398
	4 Deals since 2011				Total:	$10,920	$321,811	$153,917	$475,728
Group B	G-SIB Buyer or Sellers								
	The Toronto-Dominion Bank	TD	First Horizon Corporation	FHN	2/28/2022	$13,680	$1,728,672	$89,092	$1,817,764
	Bank of Montreal	BMO	BNP Paribas SA		12/20/2021	16300	988,175	105,412	1,093,587
	U.S. Bancorp	USB	Mitsubishi UFJ Financial Group, Inc.		9/21/2021	7971	558,886	105,500	664,386
	Toronto-Dominion Bank	TD	Scottrade Financial Services, Inc.		10/24/2016	1300	1,182,436	16,606	1,199,042
	Royal Bank of Canada	RY	City National Corporation	CYN	1/22/2015	5373	940,550	32,610	973,160
	Mitsubishi UFJ Financial Group, Inc.	MUFG	Pacific Capital Bancorp	PCBC	3/12/2012	1516	210,870	5,850	216,720
	PNC Financial Services Group, Inc.	PNC	Royal Bank of Canada		6/20/2011	3450	259,378	27,376	286,754
	7 Deals since 2011				Total:	$49,590	$5,868,967	$382,446	$6,251,413
Group C	Buyer and Seller above $100 Billion in Assets								
	PNC Financial Services Group, Inc.	PNC	Banco Bilbao Vizcaya Argentaria, SA		11/16/2020	$11,567	$461,817	$103,653	$565,470
	BB&T Corporation	BBT	SunTrust Banks, Inc.	STI	2/7/2019	28386	225,697	215,543	441,240
	2 Deals since 2011				Total:	$39,953	$687,514	$319,196	$1,006,710
Group D	Buyer above $100 Billion and Seller below $100 Billion								
	Citizens Financial Group, Inc.	CFG	Investors Bancorp, Inc.	ISBC	7/28/2021	$3,654	$185,104	$26,802	$211,906
	Regions Financial Corporation	RF	CMS Energy Corporation		6/8/2021	960	153,331	3,109	156,440
	M&T Bank Corporation	MTB	People's United Financial, Inc.		2/22/2021	7599	142,601	63,092	205,693
	Huntington Bancshares Incorporated	HBAN	TCF Financial Corporation		12/13/2020	5949	120,116	47,566	167,682
	Fifth Third Bancorp	FITB	MB Financial, Inc.	MBFI	5/21/2018	4617	141,500	20,168	161,668
	Canadian Imperial Bank of Commerce	CM	PrivateBancorp, Inc.	PVTB	6/29/2016	4931	513,294	20,054	533,348
	BB&T Corporation	BBT	National Penn Bancshares, Inc.		8/17/2015	1816	191,017	9,604	200,621
	BB&T Corporation	BBT	Susquehanna Bancshares, Inc.		11/12/2014	2503	187,022	18,583	205,605
	BB&T Corporation	BBT	Bank of Kentucky Financial Corporation		9/8/2014	379	188,012	1,858	189,870
	Banco de Sabadell, SA	SAB	JGB Financial Holding Company		12/4/2013	56	168,525	530	169,055
	National Australia Bank, Limited	NAB	North Central Bancshares, Inc.		3/13/2012	41	753,757	433	754,190
	11 Deals since 2011				Total:	$32,506	$2,744,279	$211,798	$2,956,077
	24 Deals with Pro-Forma Assets Above $100 Billion+ since 2011				Total:	$132,969	$9,622,572	$1,067,357	$10,689,929

Source: S&P Capital IQ; Data as of December 31, 2021

Overall, Group B deals with GSIBs as buyers or sellers comprised the majority of large bank deal value and pro forma assets. These deals involved GSIBs that are already subject to the highest level of regulatory requirements. In Group A, the limited number of banks with less than $100 billion in assets that chose to acquire another bank to breach the $100 billion size is noteworthy and clearly demonstrates the reluctance of regional banks to cross the $100 billion threshold on their own due to much higher cost and disclosure requirements for banks of that size. The limited number of Group C deals reinforces the difficulty for these companies to complete a large-scale merger while staying below the thresholds for becoming an Advanced Approaches Bank or GSIB with the higher-level requirements for capital, liquidity, stress testing, TLAC, etc. Group D banks saw the most transactions as these institutions were already familiar with crossing the $100 billion threshold and the targets represented smaller fill-in acquisitions that would not change capital, liquidity, disclosure, or other requirements.

The relatively limited amount of large bank M&A activity since 2011 and dominance of GSIB purchases clearly demonstrates that buyers have limited interest in taking on the higher capital, liquidity, and other prudential risk management requirements associated with becoming an Advanced Approaches bank or GSIB. If TLAC or other GSIB requirements were mandated for banks with more than $100 billion in assets but not classified as a GSIB, this could potentially have a chilling impact on non-GSIB large bank M&A. ***The perverse impact of this would be to further concentrate large bank M&A among the 8 existing GSIB banks in the U.S. or invite foreign GSIBs to pursue more growth in the U.S. It is not clear how that would serve the convenience and needs of the community.***

Comparison of Global Bank Concentration

Even with the bank consolidation noted above, the population per bank in the U.S. is by far the lowest of any OECD country in the world. Chart G highlights the strong advantage that U.S. consumers have in access to banks with a population per bank of 71,296 versus 631,156 for Japan, a country that is the U.S.'s closest OECD peer. In other words, the U.S. has 9x (i.e., 631,156 / 71,296) the number of banks per capita as Japan.

Note that this availability of financial institutions in the U.S. is understated because it does not include the 4,942 credit unions that also accept deposits and make loans[8]. If these were included, the total number of financial institutions would be increased to 9,781 and the population per bank would be reduced from 71,296 to 34,250. The number of banks per capita would be over 18x (i.e., 631,156 / 34,250) that for Japan, our closest peer.

Chart G
Comparison of Global Bank Concentration as of Q4 2021

	# of Banks	Population	Pop./Banks	U.S. Advantage
U.S.[1]	4,839	335 mil.	71,296	
Japan	199	125.6 mil.	631,156	9
U.K.[2]	41	68.5 mil.	936,585	13
Canada	36	38.4mil.	1,902,778	27
Spain	16	46.7 mil.	2,918,750	41
Germany	26	82.9 mil.	3,188,462	45
Brazil	52	214.8 mil.	4,130,769	58
France	14	65.6 mil.	4,685,714	66
Mexico	26	131.6 mil.	5,061,538	71
China	189	1,419 mil.	7,507,937	105

1) Number of banks in the U.S. represents the number of FDIC-Insured institutions as disclosed in the FDIC Quarterly Banking Profile
2) Includes all banks incorporated in the United Kingdom

Source: FDIC, S&P Capital IQ, OSIF, Piper Sandler

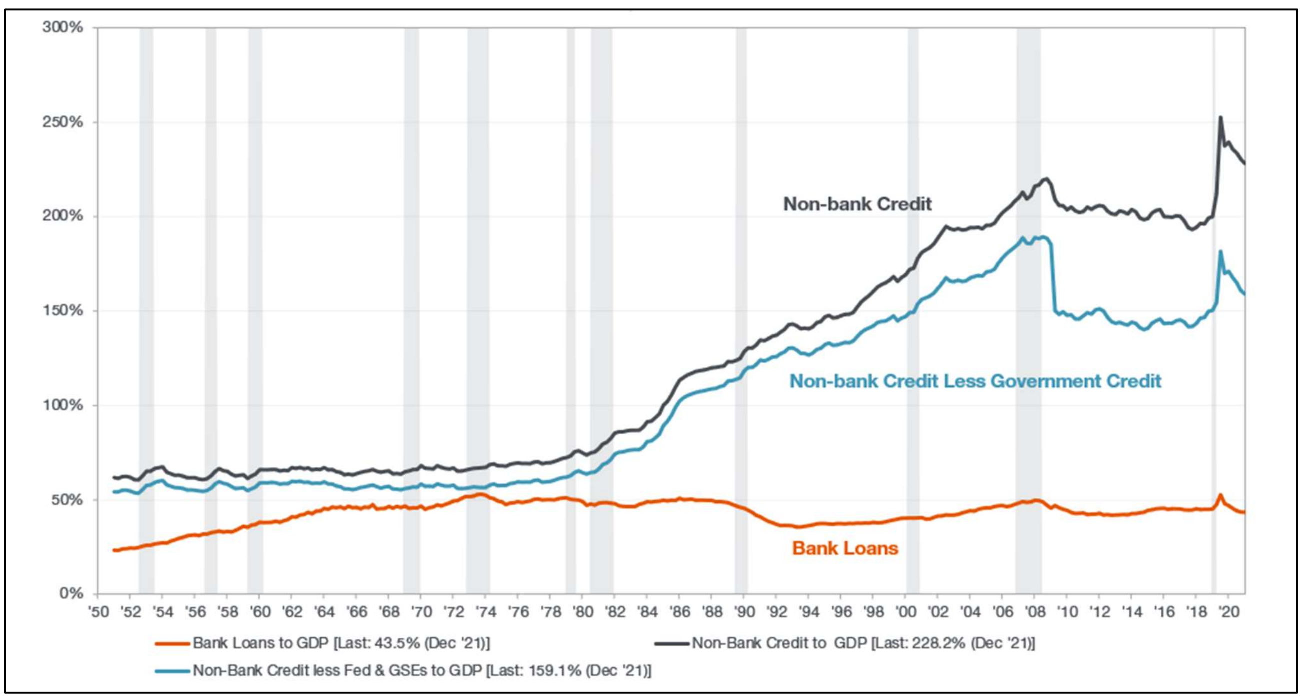
[8] Credit Union System Performance Data, Quarterly Credit Union Data Survey 2021 Q4, National Credit Union Administration, Page i.

Competitive Position of U.S. Banks Relative to Non-Banks

The banking market has changed dramatically since the BMA was originally put in place in 1995 along with the Horizontal Merger Guidelines in 2010. Savings institutions are increasingly more active in commercial banking. Credit unions are pursuing business with a broad range of customers and are more active in consumer and small business lending. Supported by almost $9 billion in additional capital under the Emergency Capital Investment Program (ECIP) to be disbursed by Treasury later this year, credit unions will likely become more aggressive in lending to small businesses.

In 2020, non-bank mortgage lenders in the U.S. such as Quicken Loans, PennyMac Financial and UWM Holdings originated almost 70% of the residential mortgages in the U.S.[9] On-line lenders such as SoFi, Kabbage (AMEX), Clearco, Capchase, Pipe, Bluevine, OnDeck, Nav, CAN Capital, Fundbox, and Fundera (NerdWallet) among others originate a significant amount of consumer and small business loans. The Farm Credit System associations originate agricultural loans in their market areas. As noted earlier, with 72% of Americans accessing their accounts through the Internet or apps, non-local banks can easily reach local customers. Collectively, as shown below in Chart H, the non-bank providers of credit far exceed the bank providers of credit. Bank loans have consistently averaged around 50% of GDP while non-bank credit sources have averaged between 200% and 250% of GDP.

Chart H
Bank Loans vs. Non-Bank Credit
as % of GDP



Source: Federal Reserve, Piper Sandler

[9] Orla McCaffrey. "Nonbank Lenders Are Dominating the Mortgage Market", The Wall Street Journal, June 22, 2021, WSJ.com.

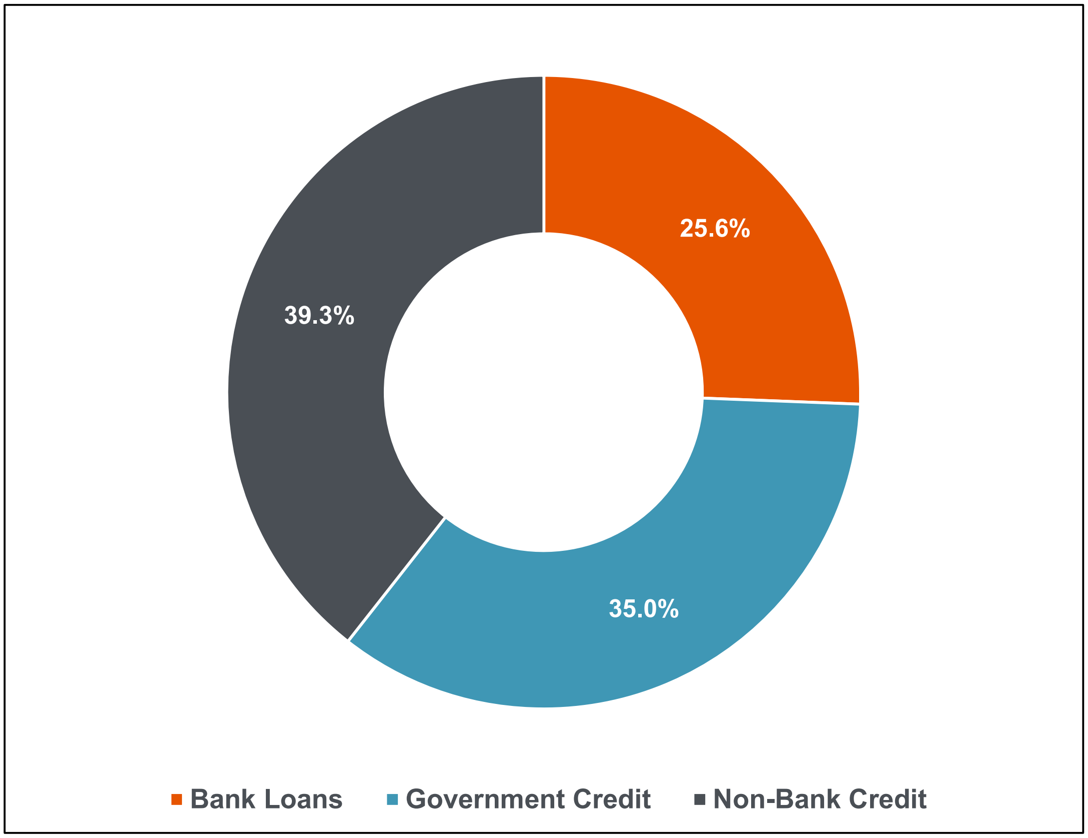
More specifically, as shown below in Chart I, most debt securities and loans are provided by non-banks ($25.7 trillion or 39.4%) and the government ($22.8 trillion or 35%). As of December 31, 2021, bank loans represented only about $16.7 trillion or 25.6% of the $65.2 trillion of domestic market debt securities and loans outstanding. Credit Unions represent $1.7 trillion in bank loans or about 2.6% of the total market with the Farm Credit System (shown as funding corporations) representing $363 billion in bank loans.

Chart I
Domestic Financial Sector Debt Securities & Loans Outstanding

Domestic Financial Sector Debt Securities & Loans Outstanding	(%)	($B)
Bank Loans		
Banks	25.6%	16,671,388
Subtotal	**25.6%**	**16,671,388**
Government Credit		
Federal Reserve	13.4%	8,750,426
GSEs	12.0%	7,848,833
Mortgage Pools -Agency & GSE	3.8%	2,501,790
Federal Govt. Retirement Funds	3.8%	2,483,672
State & Local Govt. Retirement Funds	1.9%	1,221,815
Subtotal	**35.0%**	**22,806,536**
Non-Bank Credit		
Mutual Funds	9.4%	6,106,771
Life Insurance Companies	8.0%	5,201,432
Money Market Mutual Funds	3.9%	2,568,809
Credit Unions	2.6%	1,693,395
Private Pension Funds	2.5%	1,651,960
P&C Insurance Companies	2.0%	1,324,307
ETFs	1.9%	1,211,974
ABS Issuers	1.8%	1,179,041
Foreign Banks	1.8%	1,155,939
Finance Companies	1.7%	1,125,525
Broker Dealers	1.6%	1,027,691
REITs	0.8%	506,646
Funding Corporations	0.6%	363,491
Holding Companies	0.4%	276,381
Closed-end Funds	0.3%	186,282
Banks in US Affiliated Areas	0.1%	84,646
Subtotal	**39.3%**	**25,664,290**
Total		***65,223,348***

Source: Federal Reserve Z.1 Tables L.208 and L.214; Data as of December 31, 2021

Chart I (a)
Debt Securities and Loans Outstanding
Non-bank and Government Sources Provide 74% of Domestic Debt Securities and Loans



Source: Federal Reserve Z.1 Tables L.208 and L.214; Data as of December 31, 2021

Responses to RFI Questions

To provide more specific feedback, the RFI requests comments on ten topics. Below we have listed the questions and Piper Sandler's commentary:

(i) Does the existing regulatory framework properly consider all aspect of the Bank Merger Act as currently codified in Section 18(c) of the Federal Deposit Insurance Act?

(ii) What, if any, additional requirements, or criteria should be included in the existing regulatory framework to address the financial stability risk factor included by the Dodd-Frank Act? Should any merger transaction that results in a financial institution that exceeds a predetermined asset size threshold, for example $100 billion in total consolidated assets, be presumed to pose a systemic risk concern?

No. The existing regulatory framework with Basel III capital and liquidity requirements and the DFA prudential risk standards adequately address the financial stability risk included in the DFA. The U.S. regulatory capital system is currently tiered based on asset size and complexity. Banking organizations below $100 billion in assets have the choice of three capital regimes ranging from: (i) the small bank holding company policy statement for banks with $3 billion or less in assets, (ii) the community bank leverage ratio for banks with $10 billion or less in assets, or (iii) the Basel III Standardized Approach.

Banking organizations above $100 billion in assets are determined to be either Category I, Category II, Category III, or Category IV banking organizations based on their scores on four risk components including cross-jurisdictional activity, total short term wholesale funding, nonbank assets, and off-balance sheet exposure. Advanced approaches banking organizations are those in Category I and II, (i.e., U.S. GSIBs and banking organizations that have $700 billion or more in total consolidated assets or $100 billion or more in total consolidated assets and $75 billion or more in cross-jurisdictional activity). Banking organizations that are not determined to be Category I or II institutions but have $250 billion or more in total consolidated assets or $100 billion or more in total consolidated assets and $75 billion or more in weighted STWF, nonbank assets or off-balance sheet exposure would be considered Category III banking organizations. Banking organizations that are not Category I, II or III but have $100 billion or more but less than $250 billion in consolidated total assets and do not meet or exceed any of the four risk component indicators would be classified as Category IV. Note that both Category III and IV institutions are subject to the Basel III Standardized Approaches rules.

Chart J below illustrates the impact of the calculation of these risk factors on the determination of Category I through IV status. As you can see, despite having less than $250 billion in total consolidated assets, Northern Trust Corporation is considered a Category II bank due to its very high level of cross-jurisdictional activity at $147 billion, which far exceeds the $75 billion threshold.

Chart J

Regulatory Risk Categories with Calculations of Four Risk Components

U.S. Banking Organizations ≥ $100B Assets								
Category	Asset Size Rank	Company Name	Total Assets ($000)	Cross-Jurisdictional Activity[1] ($000)	Short-term Wholesale Funding[2] ($000)	Nonbank Assets[3] ($000)	Off-Balance Sheet Exposures[4] ($000)
I	1	JPMorgan Chase & Co.	3,743,567,000	**1,759,417,000**	**625,819,600**	**778,050,000**	**790,879,800**
I	2	Bank of America Corporation	3,169,495,000	**899,965,000**	**530,430,050**	**675,435,000**	**522,994,300**
I	3	Citigroup Inc.	2,291,413,000	**2,207,954,000**	**404,924,100**	**733,486,000**	**609,237,200**
I	4	Wells Fargo & Company	1,948,068,000	**235,064,189**	**143,890,096**	**210,727,000**	**402,755,312**
I	5	The Goldman Sachs Group, Inc.	1,463,990,000	**1,220,827,000**	**428,173,050**	**1,219,158,000**	**448,859,600**
I	6	Morgan Stanley	1,188,140,000	**685,183,000**	**392,533,950**	**897,736,238**	**307,274,300**
I	11	The Bank of New York Mellon Corporation	444,438,000	**319,884,000**	**99,793,900**	70,622,000	29,956,100
I	13	State Street Corporation	314,624,000	**312,774,000**	49,353,021	14,637,000	33,089,705
II	19	Northern Trust Corporation	183,889,795	**147,399,000**	33,329,732	446,771	16,913,182
III	7	The Charles Schwab Corporation	667,270,000	31,713,000	**119,006,750**	**176,061,000**	5,818,400
III	8	U.S. Bancorp	573,284,000	46,127,000	38,017,500	9,191,623	**136,899,500**
III	9	The PNC Financial Services Group, Inc.	557,251,076	21,359,000	32,541,716	8,810,206	**100,701,761**
III	10	Truist Financial Corporation	541,241,000	6,814,000	36,675,050	16,232,000	**87,284,900**
III	12	Capital One Financial Corporation	432,381,054	11,444,346	12,173,346	4,335,031	73,690,774
IV	14	SVB Financial Group	211,483,000	66,033,000	42,863,450	0	23,889,800
IV	15	Fifth Third Bancorp	211,115,886	3,440,044	14,012,913	1,253,393	41,589,029
IV	16	Citizens Financial Group, Inc.	188,708,502	3,801,000	17,272,450	460,314	33,220,135
IV	17	American Express Company	188,548,000	49,573,000	9,142,650	53,299,656	36,111,900
IV	18	KeyCorp	186,455,921	0	12,944,296	1,925,251	39,914,184
IV	20	Ally Financial Inc.	182,114,000	1,097,000	4,452,700	10,568,000	10,116,100
IV	21	Huntington Bancshares Incorporated	174,064,229	1,847,000	6,685,545	266,764	17,923,216
IV	22	Regions Financial Corporation	163,445,000	2,175,000	15,921,200	371,000	31,724,600
IV	23	M&T Bank Corporation	155,107,160	442,001	13,959,498	222,462	13,036,076
IV	24	Discover Financial Services	110,241,674	73,000	4,513,914	3,578,769	23,500,897

Source: S&P Capital IQ; Data as of December 31, 2021

Numbers highlighted in orange illustrate levels exceeding the $75 billion threshold

(1) *Calculated as the sum of cross-jurisdictional assets and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y-15 reporting form.*

(2) *Based on the calculation for weighted short-term wholesale funding used for purposes of the GSIB surcharge rule consisting of wholesale or retail brokered deposits and sweep accounts with a remaining maturity of 1 year or less. Categories of STWF are then weighted based on four residual maturity buckets, the asset class of collateral (if any), and the characteristics of the counterparty.*

(3) *Based on the average amount of equity investments in consolidated nonbank subsidiaries and equity investments in unconsolidated nonbank subsidiaries but excluding assets held in a depository institution as well as assets held in each Edge Act or Agreement Corporation through a bank subsidiary.*

(4) *As currently reported on the FR Y-15 by BHCs with more than $100 billion in assets, this measure would define total exposure as on-balance sheet assets plus certain off-balance sheet assets, including derivative exposures, repo-style transactions, and other off-balance sheet exposures such as loan commitments.*

As shown in Chart K below, the categorization of large banks ranging from I, II, III or IV, determines the level of stress testing, capital, and liquidity requirements. To the extent that a M&A transaction causes a banking institution to exceed $100 billion in assets and therefore fall into measurement as either a Category I, II, III or IV institution, the acquiring bank could reasonably be expected to calculate its pro forma level of cross-jurisdictional activity, total short term wholesale funding, nonbank assets, and off-balance sheet exposure. The acquiring institution would also be expected to adhere to transitional arrangements for complying with the appropriate level of stress testing, capital, and liquidity requirements. These stress testing, capital and liquidity requirements would not

be viewed as an additional requirement but rather complying with existing requirements for banking institutions in excess of $100 billion in assets as updated on December 31, 2019.

Chart K

Revised Stress Testing, Liquidity and EPS Requirements

(effective December 31, 2019)

		Capital			Liquidity		
Category	**Stress Testing**	**TLAC**	**B3 Risk Based Capital**	**Leverage**	**LCR**	**NSFR**	**Internal**
Category I (8 banks)	Annual CCAR *(qualitative & quantitative)* Annual Supervisory DFAST Annual Company Run Annual Capital Plan	TLAC	Advanced Approaches GSIB Surcharge Countercyclical Buffer No opt-out of AOCI	Enhanced Supplementary Leverage Ratio	100% LCR	100% NSFR	Monthly Stress Test
Category II (1 banks)	Annual CCAR *(qualitative & quantitative)* Annual Supervisory DFAST Annual Company Run Annual Capital Plan	N/A	Advanced Approaches Countercyclical Buffer No opt-out of AOCI	Supplementary Leverage Ratio	100% LCR	100% NSFR	Monthly Stress Test
Category III (5 banks)	Annual CCAR *(qualitative & quantitative)* Annual Supervisory DFAST Bi-Annual Company Run DFAST Annual Capital Plan	N/A	Countercyclical Buffer Allow opt-out of AOCI	Supplementary Leverage Ratio	85% LCR If Wt. STWF <$75 B	85% NSFR If Wt. STWF <$75 B	Monthly Stress Test
Category IV (10 banks)	Bi-Annual CCAR *(quantitative only)* Bi-Annual Supervisory DFAST Annual Capital Plan	N/A	Allow opt-out of AOCI	Leverage Ratio	70% LCR if Wt. STWF => $50 B	70% NSFR if Wt. STWF => $50 B	Quarterly Stress Test

Source: Federal Reserve

In the chart above, it is worth noting that only the 8 GSIBs are currently subject to TLAC requirements which provide for the conversion of bank holding company debt to equity in the event of the failure of the bank. There are clear benefits in resolution of having BHC debt downstreamed as equity to the bank to provide loss absorbing capital to support the resolution of the bank. As a practical matter, all BHCs that issue senior or subordinated debt and downstream the proceeds to their bank subsidiary as equity accomplish substantially the same result without the complexity or expense of issuing additional TLAC debt.

(iii) To what extent should prudential factors (for example, capital levels, management quality, earnings, etc.) be considered in acting on a merger application?

Prudential factors are already considered in acting on a merger application based on the asset size, complexity, and the CAMELS ratings of the buyer and the seller prior to the

merger and the pro forma financial results submitted in the merger application. Standardized Approaches banking institutions are subject to regulatory capital requirements under either the Small Bank Holding Company Policy Statement, the Community Bank Leverage Ratio or Basel III. Advanced Approaches banking institutions are subject to Basel III capital along with additional Category I and II requirements on asset size and complexity. These requirements are well-defined and understood by bank management teams, bank regulators, investors, and other interested parties. The creation of a separate set of prudential factors for M&A approval under the BMA that may not be consistent with the existing Basel III and DFA requirements would not promote an orderly and efficient market. Moreover, a separate set of BMA requirements could be particularly problematic for smaller bank deals that execute the majority of M&A transactions. Smaller banks generally have limited staff support to prepare a separate set of prudential factors not otherwise included in Basel III or DFA requirements.

(iv) To what extent should the convenience and needs factor be considered in acting on a merger application? The RFI's focus on the "convenience and needs" factor indicates a potential expansive interpretation of that factor by the FDIC, questioning whether the current "reliance on an insured depository institution's successful Community Reinvestment Act (CRA) performance evaluation record is sufficient."

All FDIC-insured depository institutions are subject to CRA evaluation. The methodology for evaluating CRA performance is well understood by market participants, and ratings as well as regulatory restrictions are publicly disclosed. This transparency and consistency allow for an orderly and efficient market where banks understand what they need to do to meet CRA requirements. This enables them to make commitments to consistently lend to and invest in their local markets knowing that they will get appropriate CRA credit. To the extent that "convenience and needs" factors were considered outside the context of the CRA framework, that may cause banks to be less willing to commit to ongoing CRA investments for fear that they may be asked to provide additional undefined investments or loans to meet "convenience and needs" requirements.

On May 5, 2022, the OCC, Fed and FDIC issued a new Notice of Proposed Rulemaking (NPR) proposing to update current CRA regulations with tailoring based on asset size, business model and local conditions. This is noteworthy as the NPR was issued to modernize CRA regulations in light of changes in technology and business models. Banks could receive CRA credit for retail lending beyond their facilities-based assessment areas thereby acknowledging that bank lending and deposit gathering is no longer reliant on brick-and-mortar branches. Once these rules are finalized through the comment process, they will form the basis for CRA enforcement going forward.

There is no question that the COVID 19 crisis was an unanticipated, extraordinary event that has been particularly impactful on the residents and small businesses in low to moderate income areas (LMI) nationwide. For this reason, Congress passed the Emergency Capital Investment Program (ECIP) as part of the Consolidated Appropriations Act of 2021. Under ECIP, the U.S. Treasury will provide up to $9 billion in capital directly to Community Development Financial Institutions, Minority Depository Institutions that are credit unions, banks, or bank holding companies. These institutions are generally able to leverage their capital by 8 to 10 times. As such, they will be able to provide a substantial amount of loans, grants and forbearance for small businesses, minority owned businesses and consumers in LMI and underserved communities.

As part of a response to the COVID impact, it is understood that banks and credit unions will be expected to further support their local communities. However, CRA requirements do not apply to credit unions insured by the national credit union share insurance fund or entities supervised by the Consumer Financial Protection Bureau ("CFPB").[10] It is noteworthy that credit unions and non-banks supervised by the CFPB are currently excluded from HHI analysis and CRA requirements yet constitute significant competition for banks.

(v) In addition to the HHI, are there other quantitative measures that the federal banking agencies should consider when reviewing a merger application?

The existing HHI framework has been used for many years and is well understood by market participants. However, the inputs into this analysis need to be updated to reflect the changes in the definition of geographic and product competition. For more detail, please see the response to question VI.

(vi) In determining whether a particular merger transaction creates a monopoly or is otherwise anticompetitive, should additional factors be considered, including the absence of significant competition between the parties, rapid economic change resulting in an outdated geographic market definition, and actual competition by out-of-market and non-bank institutions? The RFI focuses on competition for loans for business startup or working capital purposes and cash management services.

Yes. Other factors should be considered/updated to account for the evolution of the market for bank loans, deposits, and other services. There are two primary references for determining the competitive profile of a merger: (a) The 1995 Bank Merger Competitive Review (Screen A and Screen B using the HHI calculations) and (b) the 2010 Horizontal Merger Guidelines (revised from the original 1992 and 1997 versions). While the HHI frameworks are still relevant, the inputs to determining geographic and product

[10] Community Developments Fact Sheet, Office of the Comptroller of the Currency, March 2014, Pages 1-2.

competition should be updated to reflect the current competitive environment more accurately.

For an initial screen of a merger transaction, the banking agencies rely primarily on Screen A which evaluates competition in predefined markets developed by the Federal Reserve. If the post-merger HHI calculation under Screen A is not over 1800 and does not result in an increase of more than 200, the banking agencies would likely not review further the competitive aspects of the merger.

However, if the HHI calculation is over the 1800/200 threshold, the banking agencies and Justice Department are likely to examine the merger in more detail with a Screen B analysis prior to receiving approval. Screen B analysis may include evidence that:

- ***The merging parties do not significantly compete,***
- ***Rapid economic change has resulted in an outdated geographic market definition***
- ***Deposit market shares are not an adequate indicator of the extent of market competition. Screen B requests data that shows:***
  - ***Competitors in the market would likely expand commercial lending (loan/deposit ratios, new lending officers, pending branches or significant out-of-market resources)***
  - ***Applicant's market share is overstated due to new market entrants; or applicant is operating under regulatory restrictions on activities***
  - ***New competitors in the market in the past two years***
  - ***Other HHI calculations for small business lending rather than deposits***
  - ***In-market thrift institutions are actively engaged in providing small business lending, working capital loans, and cash management services***
  - ***In-market credit unions are actively engaged in providing services to commercial customers***
  - ***Out-of-market institutions competing for business loans or working capital loans***
  - ***Non-bank competition for commercial customers for business loans or working capital loans.***

While the Screen B analysis provides a method to object to an adverse HHI finding using the Screen A methodology, we suggest that a better path would be to correct the Screen A deficiencies by including credit union deposit market share and thrift deposit market share in the Screen A calculation of HHI. For example, by including credit unions and thrifts in the Screen A HHI calculation with a 100% weighting, a Mid-Atlantic-based bank considering an acquisition in PA/OH could reduce the required deposit divestitures from $420.7 million to $76.7 million. This is 82% reduction in required divestiture highlights the potential inaccuracy of excluding thrift and credit unions deposits at 100% weighting.

Chart L

Screen A HHI Analysis **Without** Credit Unions or Thrifts

Dollars in thousands

Market		Deposit Market Share			Market HHI			Pro Forma Divestiture Required		
	Total	Pro Forma X / X			X / X Market HHI			Divest. Required Due to:		Total
Fed Banking Market	Market Deposits	Total Deposits	Deposit Mkt. Share	Market Rank	PRE-Merger	POST-Merger	Total Change	Total Mkt. HHI	Change in Market HHI	Divest. Required
Overlapping Markets with Total HHI and Change in HHI Considerations										
Johnstown, PA	$4,649,947	$1,452,382	31.23%	1	1,764	2,319	555	$ 389,926	$231,778	$231,778
Altoona, PA	$3,724,424	$998,173	26.80%	2	1,954	2,364	410	-	$128,303	$128,303
Bedford County, PA	$959,255	$297,120	30.97%	1	1,656	2,118	462	$ 52,309	$41,219	$41,219
Somerset County, PA	$1,424,417	$386,596	27.14%	2	3,354	3,624	270	-	$19,427	$19,427
Overlapping Markets without HHI Considerations										
Williamsport/Lock Haven, PA	$3,917,109	$553,828	14.14%	3	1,322	1,438	116	$ -	$0	$0
State College, PA	$5,039,788	$1,023,283	20.30%	2	1,310	1,393	83	$ -	$0	$0
Pittsburgh, PA	$224,184,979	$12,500,661	5.58%	3	2,701	2,716	15	-	$0	$0
York, PA	$13,000,323	$603,637	4.64%	9	1,210	1,210	0	$ -	$0	$0
Akron, OH	$18,720,303	$113,143	0.60%	20	1,606	1,606	0	$ -	$0	$0
Susquehanna Valley, PA	$6,325,576	$537,058	8.49%	5	867	902	35	$ -	$0	$0
Indiana County, PA	$2,671,917	$516,354	19.33%	2	3,160	3,209	49	-	$0	$0
Huntingdon County, PA	$770,588	$169,026	21.93%	3	2,127	2,127	0	-	$0	$0
Aggregate	**$285,388,626**	**$19,151,261**	**0.07%**					**$442,235**	**$420,727**	**$420,727**

Source: S&P Capital IQ

Note: Post-merger target company's branches are weighted using the buyer's company type; others might employ methodologies that differ from this.

Chart M

Screen A HHI Analysis **With** Credit Unions or Thrifts

Dollars in thousands

Market		Deposit Market Share			Market HHI			Pro Forma Divestiture Required		
	Total	Pro Forma X / X			X / X Market HHI			Divest. Required Due to:		Total
Fed Banking Market	Market Deposits	Total Deposits	Deposit Mkt. Share	Market Rank	PRE-Merger	POST-Merger	Total Change	Total Mkt. HHI	Change in Market HHI	Divest. Required
Overlapping Markets with Total HHI and Change in HHI Considerations										
Altoona, PA	$3,724,424	$998,173	26.80%	2	1,539	1,853	314	$ 38,218	$86,753	$38,218
Somerset County, PA	$1,424,417	$386,596	27.14%	2	3,354	3,624	270	-	$19,427	$19,427
Bedford County, PA	$959,255	$297,120	30.97%	1	1,511	1,915	404	$ 19,093	$36,022	$19,093
Overlapping Markets without HHI Considerations										
Williamsport/Lock Haven, PA	$3,917,109	$553,828	14.14%	3	1,132	1,230	98	$ -	$0	$0
State College, PA	$5,039,788	$1,023,283	20.30%	2	1,140	1,210	70	$ -	$0	$0
Pittsburgh, PA	$224,184,979	$12,500,661	5.58%	3	2,436	2,449	13	-	$0	$0
York, PA	$13,000,323	$603,637	4.64%	9	1,082	1,082	0	$ -	$0	$0
Akron, OH	$18,720,303	$113,143	0.60%	20	1,348	1,348	0	$ -	$0	$0
Johnstown, PA	$4,649,947	$1,452,382	31.23%	1	1,337	1,747	410	$ -	$177,648	$0
Susquehanna Valley, PA	$6,325,576	$537,058	8.49%	5	726	752	26	$ -	$0	$0
Indiana County, PA	$2,671,917	$516,354	19.33%	2	3,153	3,202	49	-	$0	$0
Huntingdon County, PA	$770,588	$169,026	21.93%	3	2,037	2,037	0	$ 74,469	$0	$0
Aggregate	**$285,388,626**	**$19,151,261**	**0.07%**					**$131,780**	**$319,850**	**$76,738**

Source: S&P Capital IQ

Note: Post-merger target company's branches are weighted using the buyer's company type; others might employ methodologies that differ from this.

Credit unions are currently only required to report deposits at the headquarters level rather than the branch deposit level. To make the Screen A analysis more accurate, credit

unions and thrifts should be included with a 100% weighting and credit unions should be required to report deposits at the branch level. But other changes are also needed. The explosive growth of national non-bank mortgage lenders, small bank lending through the PPP and SBA lending programs, and unsecured cash flow lending should be considered when determining the competitive market. This may require some guidance from the regulatory agencies on how to account for such competitors.

(vii) Does the existing regulatory framework create an implicit presumption of approval?

The existing regulatory framework relies on existing prudential capital rules and DFA requirements along with use of CRA ratings as a proxy for meeting the "convenience and needs" test. This approach promotes an orderly and efficient market with rules and regulations that are transparent, objective, and measurable. The current Screen A HHI test for market concentration is currently not accurate as it does not reflect the impact of credit union, thrift, non-bank, out-of-region bank and fintech competition. The current process does not create a presumption of approval but rather requires that the applicant place heavy reliance on Screen B rebuttals given the inaccuracy of the Screen A calculations using just commercial bank deposits. This Screen B rebuttal process is expensive and time consuming particularly for small financial institutions with more limited staff resources.

(viii) Does the existing regulatory framework require an appropriate burden of proof from the merger applicant that the criteria of the BMA have been met?

(Please see comments for VII above)

(ix) The RFI notes that the BMA provides an exception to its requirements if the responsible agency finds that it must act immediately to prevent the probable failure of one of the insured depository institutions involved in the merger transaction and asks whether that exception has proven beneficial or detrimental to the bank resolution process and to finance stability.

As shown below in Chart N, the purchase of Washington Mutual by JP Morgan enabled the FDIC to avoid any losses to the deposit insurance fund.

Chart N
Washington Mutual Case Study - $0 Total Loss to the DIF

Washington Mutual

JPMorgan Chase & Co.

Washington Mutual Key Statistics ($B)

Purchase Price	***September 25, 2008***
Total Consideration	**$1.9**
Acquired in Resolution	***September 25, 2008***
Total Assets	**$307.0**
Total Deposits	**$188.0**
Losses to Deposit Insurance Fund	
Total Losses incurred	**$0.0**

Source: Federal Deposit Insurance Corpation, S&P Capital IQ Pro

Washington Mutual, Inc. was the holding company for Washington Mutual Bank, Henderson, NV and Washington Mutual Bank, FSB, Park City, UT. It was the largest bank failure by total assets in U.S. history and had over 43,000 employees across 2,239 branches in 15 states. Total assets as of June 20, 2008 were $37 billion, with $188 billion of deposits and $82.9 billion of borrowings ($7.8 billion of which was subordinated debt).

The resolution timeline unfolded quickly. On September 15, 2008, panicked by the bankruptcy of Lehman Brothers, Washington Mutual customers withdrew $16.7 billion in deposits over the next 10 days. On September 25, 2008, Washington Mutual Bank was closed by the Office of Thrift Supervision and Federal Deposit Insurance Corporation was named as receiver.

JPMorgan Chase acquired the banking operations of Washington Mutual Bank along with assuming the qualified financial contracts and making a payment of $1.9 billion. Claims by equity, subordinated and senior debt holders were not acquired and the FDIC, as Receiver for Washington Mutual Bank, did not anticipate subordinated debt holders of the bank would receive any recovery on their claims.

All depositors were fully protected with no cost to the Deposit Insurance Fund

However, the failure of Washington Mutual and Wachovia and their subsequent acquisitions by JP Morgan and Wells Fargo, respectively, caused deposit market share concentration for the top three financial institutions to increase from approximately 25% of total deposits to roughly 35% of total deposits. Since then, the deposit share market concentration for the top three banks has not materially changed from 2009 to 2021.

(x) To what extent would responses to Questions 1-9 differ for the consideration of merger transaction involving a small insured depository institution?

As stated previously, the existing Basel III and DFA framework make clear distinctions in capital and risk management requirements primarily based on asset size and complexity. These requirements are well understood by all market participants which has contributed to a historically orderly market in evaluating transactions. But there is a need for many changes in the Screen A HHI analysis and inclusion of non-bank, neo bank and fintech competitors. These changes are relevant for all banking institutions but particularly important for smaller institutions that don't have the staff support to prepare the Screen B analysis, which may be required to overcome an adverse finding using the current inaccurate Screen A HHI analysis. The amendment of the Screen A HHI deposit market share calculation to include credit union and bank deposits at 100% weighting and using deposits at the credit union branch level is critically important for smaller banks that operate in less populated areas markets.

Product and geographic competition from non-banks, neo banks and fintech companies places enormous pressure on regional and smaller banks that have the regulatory burden of being a bank but not the scale that the $100 billion banks, non-banks and fintech companies can achieve using their size and technology. As such, appropriate metrics should be developed to accurately measure the competitive impact that such market participants have on the overall banking market to allow these regional and smaller banks to continue to gain scale without inadvertently triggering market concentration concerns.

Summary and Recommendations

The RFI suggests that the reduction in banks is due to uncontrolled M&A activity and the BMA needs to be updated to address and potentially limit such activity. However, there are multiple causes for bank concentration including healthy bank M&A, cyclical bank failures, and limited de novo bank formation. Despite the decline in number of banks, the U.S. still has 9x the number of banks per capita as its closest OECD peer country. If credit unions were included in the calculation, the U.S. would have 18x the number of banks per capita. Banks currently account for a small percentage of lending relative to GDP and financial sector debt and loans outstanding. The emergence of non-bank and fintech lenders reinforces the competitive threat faced by U.S. banks, but the existing framework to evaluate bank concentration in a M&A context dates back to the 1995 Bank Merger Guidelines and the 2010 Horizontal Merger Guidelines. These tools were developed around deposit market share based on branch location using the HHI analysis. This hardly makes sense in today's market where 72% of customers access their bank accounts through the Internet or their phone app. Screen A of the HHI framework also does not consider lending and other banking services concentration. These considerations highlight the need to update the mechanism to measure geographic and product competition under the BMA. Below we have suggested a few specific changes discussed previously that we urge the FDIC and other regulators to consider including:

Deposits:
- Add credit union and thrift deposits at 100% weight for Screen A HHI analysis
- Require credit union deposit information to be disclosed by credit union branch rather than headquarters location
- For online and centrally booked deposits, use the location of the depositor rather than the central bank location

Loans:
- Include non-bank and out-of-region mortgage loan originators in the definition of market competition
- Include non-bank and out-of-region banks that are active in small business and consumer loan originations within the definition of market competition
- Add Farm Credit System administration loans to the definition of market competition

CRA:
- Consider adding CRA requirements for credit unions and non-banks supervised by the CFPB which are currently excluded from CRA requirements yet constitute significant competition for banks.

It is worth noting that gathering the information to support the credit union deposit and centrally booked deposit analysis may be difficult, time consuming and expensive. To the extent that gathering this additional information is determined to be impractical or cost prohibitive, an increase to the current HHI threshold of 1800 could be considered. This would acknowledge the high level of competition from credit unions, thrifts and centrally booked deposits without requiring the granular data to support the Screen A analysis.

In closing, our goal in submitting these comments is to contribute constructively to a rulemaking process that enhances the safety and soundness of U.S. banks without sacrificing orderly markets or damaging the U.S. financial system or the economy. We suggest that the FDIC and other regulators consider three guideposts in making these changes:

- Promote an orderly and efficient market with rules and regulations that are transparent, objective, measurable, and consistently applied by all the relevant regulatory agencies;
- Utilize the size and complexity standards of existing Basel III and Dodd Frank capital and prudential risk management standards for BMA purposes; and
- Update geographic and product parameters for Screen A measurement of competition to be consistent with the current market reality of greater competition from thrifts, credit unions, non-banks, out-of-region banks, and fintech players

We greatly appreciate your consideration of our comments and would welcome the opportunity to discuss these further with you or respond to any questions as the Board updates the BMA requirements.

Respectfully submitted,

Thomas W. Killian
Managing Director

tom.killian@psc.com
(212) 466-7709

Thomas Killian has over 44 years of capital markets and M&A transaction execution experience, with a long history at Piper Sandler of developing innovative capital instruments and representing the firm in conferences and private meetings with the Board, FDIC, OCC, and others to discuss capital structure, restructuring and resolution strategies, and Basel III and DFA related issues.

We would like to gratefully acknowledge the important contributions to the preparation of this comment letter by Piper Sandler colleagues - Robert Albertson, Weison Ding, Jennifer Chou, Kevin Chaimowitz, and Chris Bracco.

Appendix A

Overview of Current Bank Merger Review Methodology and Rationale

Banking industry merger review is conducted by the Department of Justice Antitrust Division (DoJ) and the relevant banking regulatory agency. The relevant banking regulatory agencies currently include the Federal Reserve Board (the "Fed"), the Federal Deposit Insurance Corporation ("FDIC") or the Office of the Comptroller of the Currency ("OCC") under the authority of the Bank Holding Company Act ("BHC") of 1956 and the Bank Merger Act ("BMA") of 1960. To the extent that credit unions and non-bank companies are added to the competitive analysis, the National Credit Union Administration and the Consumer Finance Protection Bureau may be included as relevant regulatory agencies.

The DoJ relies on the merger guidelines set forth in the 1995 Banking Merger Guidelines ("BMG") and the currently accepted best practices detailed in the general merger framework in the 2010 Horizontal Merger Guidelines ("HMG"). The BMG relies upon the Herfindhahl-Hirschman Index (HHI) screen to determine market concentration. This framework was developed 25 years ago when banking services were largely delivered through local branches. The measurement of deposit concentration was viewed as a proxy for overall banking concentration based on the business practices at that time.

Any proposed merger has to also be approved by the relevant banking regulator. The requirement for this review was codified in the section 18(c) of the Federal Deposit Insurance Act. Section 18(c)5 specifies that the responsible agency shall not approve (A) any proposed transaction which would result in a monopoly or attempt to monopolize the business of banking in any part of the U.S. or (B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In applying the BMA, "in every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system."

Appendix B

Glossary of Key Terms

Selected Glossary of Key Terms (*)

Advanced Approaches Banks – Advanced approaches banking organizations are those in Category I and II, (i.e., U.S. GSIBs and banking organizations that have $700 billion or more in total consolidated assets or $100 billion or more in total consolidated assets and $75 billion or more in cross-jurisdictional activity.

Bank Merger Guidelines (BMG): Originally introduced in 1995, the Bank Merger Guidelines describe the procedures by which the banking regulatory agencies and the Department of Justice review the competitive impact of bank and bank holding company mergers. To speed this competitive review and reduce the regulatory burden on the banking industry, the banking agencies and Department of Justice rely on screens using the Herfindhahl-Hirschman Index (HHI). This framework was developed 25 years ago when banking services were largely delivered through local branches. The measurement of deposit concentration was viewed as a proxy for overall banking concentration based on the business practices at that time. To the extent that the calculation specified in Screen A does not result in a postmerger HHI over 1800 and an increase of more than 200, the banking agencies are unlikely to further review the competitive effects of the merger. If the result of the calculation specified in Screen A exceeds the 1800/200 threshold, the Department of Justice may review further, and applicants may consider providing additional information for a Screen B analysis. If the applicants believe that Screen B does not accurately reflect market concentration and competitive realities in a particular area, they are encouraged to submit additional information explaining the reasons for their belief.

Community Bank Leverage Ratio (CBLR) – Qualifying community banking organizations have 9.00% or more of tier 1 capital and meet the following criteria: (i) less than $10 billion of total consolidated assets, (ii) total off-balance sheet exposures of less than 25% of total consolidated assets, (iii) total trading assets and liabilities less than 5% of total consolidated assets, (iv) mortgage servicing assets (MSAs) less than 25% of CBLR tangible equity, (v) temporary difference DTAs of less than 25% of CBLR tangible equity, and (vi) not subject to any written agreement, order or capital directive.

Cross Jurisdictional Activity – One of the four risk metrics proposed by regulators as part of the EGRRCPA rework of stress testing, liquidity, and enhanced prudential standards management for risk classification of Category I, II, III, IV. Defined as the sum of cross-jurisdictional assets and liabilities as reported on the FR Y-15 by holding companies. This requirement replaces the current limit of $10 billion or more in foreign exposure to be considered an advanced approaches bank with a $75 billion exposure threshold for cross-jurisdictional activity. Note that this measure does not include the assets and liabilities from positions in derivative contracts.

CET1 – Common equity tier 1 capital as defined in the Basel III final capital rules.

Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA): (S.2155) Included a wide range of rulemakings to streamline and clarify certain Dodd Frank Act and other regulatory requirements. These included amendments to appraisals, the community bank leverage ratio, reciprocal deposits, the Volcker Rule, short form call reports, examination cycle, HVCRE and ADC risk weighting, tailoring capital and liquidity rules for large banking organizations, company-run stress tests, resolution plans, supplementary leverage ratio for custodial banks, and high-quality liquid assets (HQLA). Section 401 raised the asset size threshold for enhanced prudential standards (EPS) including capital and liquidity rules from $50 B to $250 billion in total consolidated assets but allows the Fed to apply EPS to any BHC between $100 billion and $250 billion in total consolidated assets under certain circumstances. It also raised the asset size threshold from $10 billion to $250 billion for company-run stress tests and raised the threshold for section 165(d) resolution plans from $50 billion to $250 billion.

Global Systemically Important Bank (GSIB) - Determined by the Financial Stability Board and updated yearly. The eight firms currently identified as U.S. GSIBs are Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup, Inc., Goldman Sachs Group, Inc., JP Morgan Chase & Co., Morgan Stanley, State Street Corporation, and Wells Fargo & Company. Source: http://www.fsb.org/wp-content/uploads/2016-list-of-global-systemically-important-banks-G-SIBs.pdf.

Horizonal Merger Guidelines (HMG): Published by the Department of Justice and Federal Trade Commission (FTC) on August 19, 2010. These guidelines outline the principal analytical techniques, practices and enforcement policy of the Department of Justice and FTC regarding M&A involving actual or potential competitors (horizontal mergers) under the federal anti-trust laws. The HMG cover evidence of adverse competitive effects, targeted customers and price discrimination, market definition, market participants, share and concentration, unilateral effects, coordinated effects and powerful buyers.

Liquidity Coverage Ratio (LCR) – Large internationally active (Category I and II) banking organizations are required to maintain a minimum amount of high-quality liquid assets (HQLA) to withstand 100% of liquidity needs in a 30-day standardized stress scenario. A banking organization must have sufficient HQLA amount (the LCR numerator) to cover the total net cash outflows (the LCR denominator) within the 30-calendar-day period. Category III and IV banking organizations are only required to meet 70 to 85% of 30-calendar-day liquidity requirements.

Net Stable Funding Ratio (NSFR) – Large internationally active (Category I and II) banking organizations are required to maintain total available stable funding (ASF) greater than total required stable funding (RSF). A bank's total ASF is the portion of its capital and liabilities that will remain with the institution for more than one year. An ASF factor (ranging from 0 to 100%) is assigned to the carrying value of each element of funding based on the expectation that it would be fully available for funding in more than one year. A bank's total RSF is the amount of stable funding that it is required to hold given the liquidity characteristics and residual maturities of its assets and the contingent liquidity risk arising from its off-balance sheet exposures. For each item, the RSF amount is determined by assigning an RSF factor (ranging from 0 to 100%) to the carrying value of the exposure. A banking organization must have sufficient RSF to cover the RSF for more than the one-year horizon. Category III and IV banking organizations are only required to meet 70 to 85% of NSFR requirements.

Nonbank Assets – One of the four risk metrics proposed by regulators as part of the EGRRCPA rework of stress testing, liquidity, and enhanced prudential standards management. For risk classification (I, II, III, IV) purposes, measured as the average amount of equity investments in nonbank subsidiaries. Based on the average amount of equity investments in consolidated nonbank subsidiaries and equity investments in unconsolidated nonbank subsidiaries but excluding assets held in a depository institution as well as assets held in each Edge Act or Agreement Corporation through a bank subsidiary.

Off-Balance Sheet Exposures – For CBLR purposes, the total off balance sheet exposure would be calculated as the sum of the notional amounts of: the unused portions on loan commitments (excluding unconditionally cancellable commitments); self-liquidating trade-related contingent items and transaction-related contingent items; sold credit protection in the form of guarantees and credit derivatives; credit enhancing representations and warranties; off balance sheet securitization exposures; letters of credit; forward agreements that are not derivatives contracts; and securities lending and borrowing transactions. Note that the calculation of off-balance sheet exposures for the CBLR does not require that off-balance sheet exposure be converted to on-balance sheet equivalents and assigned the appropriate risk weight. For risk classification (I, II, III, IV) purposes, off-balance sheet exposures are one of the four new risk metrics proposed by regulators as part of the EGRRCPA rework of stress testing, liquidity, and enhanced prudential standards management. This metric applies to holding companies with more than $100 billion in assets and defines total exposure (from FR Y-15) minus total consolidated assets (from FR Y-9C). Total exposure includes a banking organization's on-balance sheet assets plus certain off-balance sheet exposures including derivatives exposures, repo-style transactions, and other off-balance sheet exposures such as loan commitments.

Prompt Corrective Action (PCA) – Bank level capital ratios required to maintain well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized status. With the new CBLR, the regulatory agencies have proposed CBLR ratios associated with each of the PCA categories as follows: well capitalized = greater than or equal to 9.00%; adequately capitalized = greater than or equal to 7.5% but less than 9.00%; undercapitalized = greater than 6.0% but less than 7.5%; significantly undercapitalized = less than 6.0%.

Risk Weighted Assets (RWA) – Risk weighted assets that comprise the denominator in the risk weighted assets ratio applicable to Basel III.

TLAC – Debt and equity issued to third parties that counts as tier 1/tier 2 capital as well as debt that is (i) paid-in, (ii) unsecured, (iii) perpetual or has a remaining maturity of at least 1 year, and non-redeemable by the holder within one year, (iv) must absorb losses prior to "excluded liabilities" in insolvency, without giving rise to compensation claims or legal challenge, (v) subordinated to excluded liabilities, (vi) may be ranked as senior to capital instruments, including tier 2 subordinated debt, and (vii) cannot be hedged or netted in a way that would reduce ability to absorb losses. TLAC requirements are currently only applicable to 8 U.S. GSIBs and 22 foreign GSIBs.

Total Trading Assets – For CBLR purposes, a qualifying community bank is required to have 5% or less of trading assets and liabilities. This indicator is calculated as the sum of exposures in schedules RC of the Call Report or HC of the Form FR Y-9C. This ratio consists of the total trading assets and liabilities dividends by total consolidated assets.

Short Term Wholesale Funding (STWF) – One of the four new risk metrics proposed by regulators as part of the EGRRCPA rework of stress testing, liquidity, and enhanced prudential standards management. This short-term funding indicator is reported on the FR Y-15 by holding companies and is consistent with the calculation used for the GSIB surcharge. This measure shows a banking organization's liquidity risk from short-term, generally uninsured funding for investment in longer-term assets. Weighted short-term wholesale consists of wholesale or retail brokered deposits and sweep accounts with a remaining maturity of 1 year or less. Categories of STWF are then weighted based on four residual maturity buckets, the asset class of collateral (if any), and the characteristics of the counterparty.

(*) This is intended to provide a brief summary of the key terms mentioned in this report. For a complete list of all links to key source documents see list below:

- *BMA - Bank Merger Act is derived from the Federal Deposit Insurance Act – Section 18(c) which contains the primary rules governing regulatory agency oversight of insured depository M&A activity* *https://www.fdic.gov/regulations/laws/rules/1000-2000.html#:~:text=1000%20%2D%20Federal%20Deposit%20Insurance%20Act&text=(A)%20IN%20GENERAL.,be%20prescribed%20by%20the%20Corporation.*

- *RFI - Request for information related to the BMA* *https://www.fdic.gov/news/board-matters/2021/2021-12-06-notational-fr.pdf*

- *BMG - 1995 Banking Merger Guidelines* *https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995*

- *HMG – 2010 Horizontal Merger Guidelines* *https://www.justice.gov/atr/horizontal-merger-guidelines-08192010*

- *DFA - Dodd Frank Act* *https://www.congress.gov/111/plaws/publ203/PLAW-111publ203.pdf*

- CBLR - Community Bank Leverage Ratio https://www.fdic.gov/news/board-matters/2019/2019-09-17-notice-dis-a-fr.pdf

- Small Bank Holding Company Policy Statement: https://www.federalreserve.gov/newsevents/pressreleases/files/2018-18756.pdf

- Basel III and Prompt Corrective Action (PCA) – Standardized Approaches https://www.ecfr.gov/current/title-12/chapter-II/subchapter-A/part-217

- Current GSIB Surcharge Requirements https://www.fitchratings.com/research/banks/higher-gsib-capital-surcharges-supportive-of-us-bank-credit-ratings-27-01-2022

- Capital Simplification for Qualifying Community Banks https://www.govinfo.gov/content/pkg/FR-2019-11-13/pdf/2019-23472.pdf

- Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements https://www.federalregister.gov/documents/2019/11/01/2019-23800/changes-to-applicability-thresholds-for-regulatory-capital-and-liquidity-requirements

- Notice of Proposed Rulemaking for Community Reinvestment Act Regulations https://www.federalreserve.gov/consumerscommunities/community-reinvestment-act-proposed-rulemaking.htm