August 22, 2022

Comment Intake – Relationship Banking
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2022-0040

Re: Comments in Response to Request for Information Regarding Relationship Banking and Customer Service, Docket No. CFPB-2022-0040

To Whom it May Concern:

The Bank Policy Institute,[1] the Consumer Bankers Association,[2] and the American Bankers Association[3] appreciate the opportunity to submit comments to the Consumer Financial Protection Bureau in response to the request for information "related to relationship banking and how consumers can assert the right to obtain timely responses to requests for information about their accounts from banks and credit unions with more than $10 billion in assets, as well as from their affiliates."[4]

---

[1] BPI is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's bank-originated small business loans and are an engine for financial innovation and economic growth.

[2] CBA is the only national trade association focused exclusively on retail banking. Established in 1919, the association is a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly $3 trillion in consumer loans, and provide $270 billion in small business loans.

[3] The American Bankers Association is the voice of the nation's $24 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $19.9 trillion in deposits and extend $11.4 trillion in loans.

[4] Request for Information Regarding Relationship Banking and Customer Service, 87 Fed. Reg. 36,828 (Jun. 21, 2022).

I. Executive Summary

The provision of the Dodd-Frank Act on which the CFPB relies to issue the RFI—section 1034(c)—states that banks "shall, in a timely manner, comply with a consumer request for information" concerning the consumer financial product or service that the consumer obtained from the bank.[5] Section 1034(c) is not a customer service provision and does not authorize the CFPB to regulate customer service or set the terms of how, when, or where banks serve their customers. The CFPB would exceed the authority Congress gave the agency were it to attempt to do so.

Banks of all sizes take very seriously the important role they play in the financial lives of consumers, families, businesses, communities, and the nation's economy. Banks provide products and services that help consumers meet their financial needs, and they are continuously innovating to better serve customers in this highly competitive marketplace. To ensure customers with diverse needs and preferences are able to take full advantage of the products and services banks offer, banks serve customers through a variety of channels, including at branches, online, through mobile applications, and over the telephone.

Although the CFPB has styled its action as a Request for Information, the RFI strongly suggests that the CFPB has already drawn conclusions regarding the level of customer service that banks provide to consumers. The RFI implies that banks' use of technology to better serve consumers leads to less personal and suboptimal customer service and is a departure from "relationship banking." The RFI does not define this term but Director Chopra, in his remarks introducing the RFI, describes "relationship banking" as being characterized by reliance on face-to-face interactions and other activities at brick-and-mortar branch locations, as compared with the provision of customer service through telephone, online, or other technologically advanced platforms.[6] In the press release issued in connection with the RFI, the CFPB characterizes the RFI as "part of a broader effort to restore relationship banking in an era of consolidation and digitization [as t]he decline of relationship banking has deprived some consumers of customized advice, responsiveness, and care."[7]

Customer service is an important and essential priority for banks. The CFPB's statements in the RFI unfairly characterize the quality of customer service provided by banks and appear to reflect the CFPB's pre-determined conclusions that banks do not provide high quality customer service. This approach is unhelpful to consumers as they navigate the financial services marketplace and is likely to confuse them. As is demonstrated in the body of this response, banks provide high

---

[5] 12 U.S.C. 5534(c)(1).

[6] Bureau of Consumer Fin. Prot., Prepared Remarks of CFPB Director Rohit Chopra in Great Falls, Montana on Relationship Banking and Customer Service (Jun. 14, 2022), https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-in-great-falls-montana-on-relationship-banking-and-customer-service/.

[7] Bureau of Consumer Fin. Prot., CFPB Launches Initiative to Improve Customer Service at Big Banks (Jun. 14, 2022), *available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-initiative-to-improve-customer-service-at-big-banks/.

levels of customer service and are subject to robust and extensive oversight and regulation, including but not limited to, rigorous oversight by the CFPB and one or more of the federal banking agencies. Yet, the mischaracterizations and predetermined conclusions in the RFI could give consumers the false impression that banks provide poor customer service and that customers' demonstrated trust in banks is misplaced.

Consumers have the power to determine for themselves whether the customer service they receive from their bank is acceptable and to decide who gets their business. Consumers understand how they want to be treated and the value they place on that treatment in selecting their financial services providers. Simply put, banks compete on customer service.

II. The RFI and related CFPB statements rest on a flawed legal and factual foundation.

a. The RFI and related statements by the CFPB misstate the CFPB's authority under section 1034 of the Dodd-Frank Act.

Section 1034(c) of the Dodd-Frank Act provides, in part, that:

> A covered person subject to supervision and primary enforcement by the CFPB pursuant to section 1025 shall, in a timely manner, comply with a consumer request for information in the control or possession of such covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including supporting written documentation, concerning the account of the consumer.[8]

Thus, section 1034 obligates a "covered person" within the meaning of the Dodd-Frank Act to "timely" provide information in response to a consumer request.[9] It says nothing about customer service or relationship banking. Nor does section 1034, any other section of the Dodd-Frank Act, or any other statute enforced by the CFPB grant the CFPB the authority to dictate, via regulation

---

[8] 12 U.S.C. 5534(c)(1). The statute provides exceptions for any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors; any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting or making any report regarding other unlawful or potentially unlawful conduct; any information required to be kept confidential by any other provision of law; or any nonpublic or confidential information, including confidential supervisory information.

[9] As BPI, CBA, and ABA have asserted previously, consumer financial information should be protected regardless of whether a bank or nonbank is holding the information. Banks have developed sophisticated systems to protect consumer data and to detect, prevent, and respond to cyber threats. These activities by banks are subject to extensive regulatory oversight to ensure such protections are in place; failure to implement these protections can result in financial penalties or restrictions on activities. The Gramm-Leach-Bliley Act and its implementing regulations set data privacy rules for financial institutions. Banks are also subject to extensive guidelines from the Federal Financial Institutions Examination Council's Information Technology handbooks, and the federal banking agencies' third-party risk management guidelines. Although some nonbanks may be subject to GLBA's data privacy and security requirements, they are not subject to regular examination for compliance with these requirements. *See* ABA, BPI, and SIFMA, *Letter to the National Institute of Standards and Technology regarding Draft Report 8389 Cybersecurity Considerations for Open Banking Technology and Emerging Standards* (Mar. 3, 2022), *available at* https://bpi.com/wp-content/uploads/2022/03/BPI-Comment-Letter-NIST-Open-Banking-Report.pdf.

or otherwise, the type of customer service banks provide or the manner in which they provide such service.

Under the statute, the right to "timely information" from covered service providers addresses the right of a consumer to obtain a consumer's financial data from his or her financial institution. The concept of a timely response is used in other provisions in the Dodd-Frank Act and other consumer protection statutes, as the RFI notes, and, as in section 1034(c), merely indicates a timeframe within which something specific should be completed.[10] However, a bank's obligation to provide a consumer particular information or data "in a timely manner" in response to a specific request for such information is very different from an obligation to serve customers on particular terms or in a certain manner more generally. The latter encompasses a much broader and complex set of interactions between consumers and their financial institutions, which are not addressed by section 1034.

Furthermore, the broader context of section 1034 undermines the argument that section 1034(c) provides the CFPB with the right to dictate the terms or type of customer service that banks provide. Section 1034(a) requires the CFPB to establish procedures to provide a timely response to consumers regarding complaints or inquiries about a "covered person." Section 1034(b), in turn, provides that a "covered person" subject to the CFPB's supervision must provide a timely response to the CFPB regarding such complaints or inquiries. Thus, 1034(a) and (b) provide for consumers' rights to receive timely responses from the CFPB regarding inquiries or complaints about institutions that the CFPB supervises and the CFPB's right to receive timely responses from institutions that it supervises, respectively. Within this context, it would make little sense for 1034(c) to address customer service more broadly, as covered entities subject to the CFPB's supervision do not provide the CFPB with "customer service," nor does the CFPB have customers to whom it provides customer service. Thus, section 1034(c) provides consumers a right to a timely reply in response to a specific information request, consistent with the other two subsections of section 1034.

Nevertheless, it appears that the CFPB is attempting to use this RFI to create a legal authority that it does not have: the right to dictate the type of customer service banks provide and the manner in which they do so. The preamble to the RFI correctly states that section 1034(c) grants consumers the "legal right to obtain information."[11] Yet the RFI then explains that the RFI's purpose is actually to gather information to support the CFPB's prejudgment that banks have failed to meet "consumers' reasonable expectation that financial institutions provide 'high levels of customer service.'" Indeed, in his accompanying remarks to the RFI's release, Director

[10] For example, the Real Estate Settlement Procedures Act provides that a servicer of a federally related mortgage shall not "fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties." 12 U.S.C. § 2605(k)(1)(C). By regulation, the CFPB has interpreted "timely action" in this context to mean within either 7 or 30 business days depending on the type of error. 12 CFR § 1024.35(e)(3).

[11] Request for Information Regarding Relationship Banking and Customer Service, 87 Fed. Reg. 36,828, 36,829 (June 21, 2022).

Chopra stated that the CFPB is "taking steps to ensure the legally enshrined right to obtain basic customer service."[12]

Further, the CFPB's suggestion that section 1034(c)(1) authorizes the CFPB to regulate banks' use of algorithms and other digital tools to serve customers is undermined by section 1034(c)(2), one of the exclusions from the right to obtain information. That section provides that financial institutions do not have to provide to consumers "any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors." This language demonstrates that Congress recognized digital technology was and is routinely used in banking for a range of acceptable and beneficial purposes.

The term "relationship banking" as used by the RFI seems to refer to reliance on face-to-face interaction and other activities at brick-and-mortar branch locations, as compared with the provision of customer service through telephone, online, or other technologically advanced platforms. The RFI seeks to characterize "algorithmic banking" as a departure from the implied personalization of "relationship banking" when, in fact, advanced digital technologies such as Artificial Intelligence (AI) and machine learning have accelerated the opportunity for banks to deliver more personalized interactions with consumers through digital channels. For example, some banks have deployed tools like chat bots and call predictability algorithms that enable them to identify and resolve customer inquiries more quickly. By endorsing one particular business model or customer service channel, the CFPB risks undermining the robust, competitive marketplace for consumer products and services in which various business models are used by different institutions to attract different types of customers and to meet different customer needs. This is directly at odds with the CFPB's mission to help consumers and its statutory purpose and frequently stated goal of helping to foster "fair, transparent, and competitive marketplaces."[13]

b. The RFI and related CFPB statements rest on the deeply flawed premise that banks do not provide high-quality customer service when, in fact, banks provide exceptional customer service via multiple channels to serve customers with different needs and preferences.

Banks provide products and services that help consumers meet their financial needs. Our members devote significant time and resources to providing high-quality customer service and are continuously developing new ways to enhance consumers' banking experience, not because it is required by law, but because they are committed to providing their customers with high-quality support through a variety of channels and because competition in the banking industry demands it.

[12] Bureau of Consumer Fin. Prot., CFPB Launches Initiative to Improve Customer Service at Big Banks (Jun. 14, 2022), *available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-initiative-to-improve-customer-service-at-big-banks/.

[13] One of the purposes of the CFPB as set forth in the Dodd-Frank Act is to ensure that markets for consumer financial products and services are fair, transparent, and competitive." 12 U.S.C. 5511(a).

The United States has one of the largest, most diverse, and most competitive financial services industries in the world. Compared to other advanced economies — like Canada — that have highly concentrated and coordinated banking markets, the U.S. offers a highly competitive banking environment with relatively low levels of concentration.[14] Moreover, compared to other consumer-facing industry sectors in the U.S., such as department stores, airlines, or telecommunication carriers, the banking industry is far less concentrated and far more competitive when examining the share of total sales captured by the top four firms in each industry on a national basis.[15]

The highly competitive market for financial products and services leads banks to continually improve their practices or risk losing customers. Banks have a business imperative to provide exceptional customer service, including by responding to customer information requests as required by section 1034(c). The CFPB is misguided in suggesting that superior customer service can be provided only through live interactions with a bank representative. Banks provide multiple options for consumers to seek assistance. Customers can contact the bank through 24-hour-a-day customer service by telephone, walking into a bank branch, and mobile and online banking platforms. Banks serve customers where they are and at the times when customers want to access banking services. The multitude of ways customers can access banking services and receive assistance with those services is a hallmark — not a detriment — of the U.S. banking system. In addition, banks are continuously researching and innovating to develop other customer service capabilities in response to customer demand.

The CFPB's criticisms of technological advances including the CFPB's use of the term "algorithmic banking" in the RFI and related CFPB statements are unwarranted. The RFI implies that using technology to better serve consumers leads to less personal and suboptimal customer service. Specifically, as noted, in the press release issued in connection with the RFI, the CFPB states that the RFI is "part of a broader effort to restore relationship banking in an era of consolidation and digitization [as t]he decline of relationship banking has deprived some consumers of customized advice, responsiveness, and care."[16]

This statement creates the false impression that the adoption of digital banking tools diminishes customer service. In reality, consumer demand drove banks to develop these tools and continued and increasing demand has encouraged banks to retain and grow these platforms. For example, a recent survey by the American Bankers Association found that 81 percent of consumers believe

---

[14] Lawrence Pruss, *The Differences Between Banking in the US and Canada*, Fin. Brand (Oct. 2, 2015), *available at* https://thefinancialbrand.com/54467/comparing-united-states-canadian-banking-systems/.

[15] Francisco Covas & Paul Calem, *Five Important Facts About the Competitiveness of the U.S. Banking Industry*, Bank Pol'y Inst. (Feb. 24, 2022), *available at* https://bpi.com/five-important-facts-about-the-competitiveness-of-the-u-s-banking-industry/.

[16] Bureau of Consumer Fin. Prot., CFPB Launches Initiative to Improve Customer Service at Big Banks (Jun. 14, 2022), *available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-initiative-to-improve-customer-service-at-big-banks/.

"tech improvements by banks are making it easier to access financial services."[17] A 2022 survey by the cloud communications platform Sinch found that more than 80% of Generation Z consumers (those born in the mid- to late-1990s) surveyed want to conduct even more complex financial tasks using digital channels, including completing a loan application, paying a bill, and sharing personal information to get tailored financial product recommendations.[18]

Indeed, shifts in consumer demand for more digital and interactive financial products and services have dramatically changed the financial marketplace. Artificial Intelligence plays an increasing role in customer service due to its ability to create a more personalized experience, as banks can utilize AI to gain a better understanding of a consumer's needs to provide customized products and communications. By understanding a consumer's needs more precisely, banks can offer more personalized experiences and tailored products that allow customers to more effectively and productively manage their financial lives and enable banks to compete in an increasingly digitized marketplace.[19] Technology solutions are just one of a variety of tools banks use to meet customer demand when and where they want to engage with their bank, which enhances customer service.

Providing banking services through multiple platforms significantly enhances the customer experience. Digital, telephone and other non-brick-and-mortar tools provide consumers more convenience, such as 24/7 availability, and allow banks to continue to serve customers when life events occur that may thwart customers' ability to access their banks' services through a particular channel. These tools were of critical importance during the COVID-19 pandemic, when many brick-and-mortar branches were closed. Because of the digital capabilities offered by banks, consumers had continued access to banking products and services. Indeed, the valuable support provided by banks to customers through alternative digital channels during the pandemic greatly advanced consumer demand for — and supply of — these customer service solutions. As a J.D. Power executive noted in connection with the release of its retail banking satisfaction survey results, "If you're looking for a case study in how to improve engagement and deliver a superior customer experience in the face of massive disruption, look no further than the U.S. retail banking industry's response to the COVID-19 pandemic . . . The fact that satisfaction has improved most among customers who say they feel worse off financially speaks volumes to the

---

[17] American Bankers Association, "Consumer Bank Satisfaction Infographic" (Oct. 15, 2021), *available at* https://www.aba.com/news-research/research-analysis/consumer-bank-satisfaction.

[18] Sinch, *Bank to the Future: Financial Services – Customer Experience in 2022*, at 7 (July 2022), *available at* https://www.sinch.com/insights/customer-experience-annual-report/banking-finserv/?utm_source=eloqua&utm_medium=email&utm_campaign=newsbytes&utm_content=NEWSBYTES-20220719#default-anchor.

[19] *See* BPI's response to the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Bureau of Consumer Financial Protection, National Credit Union, Administration (collectively, the "Agencies") re: Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning, 86 Fed. Reg. 16837 (Mar. 31, 2021), *available at* https://bpi.com/wp-content/uploads/2021/06/BPI-Comment-Letter_Interagency-RFI-on-AI_Final-06.25.2021.pdf. *See also* Penny Crossman, "AI in banking: Where it works and where it doesn't work," American Banker (April 7, 2021), *available at* https://www.americanbanker.com/news/ai-in-banking-where-it-works-and-where-it-doesnt ("Banks have also found that AI is effective in shaping the customer experience, using customer data to offer personalized interactions or just-in-time advice.").

proactive efforts many banks launched to support their customers in a period of heightened financial stress."[20] In addition, the pandemic accelerated the adoption of digital banking, and consumer preference for digital banking channels has persisted even after the height of the pandemic while branch use has declined.[21]

The availability of digital options also decreases call wait times because it frees customer service agents to speak with customers who wish to speak with a live representative. For this latter group of customers, digital prompts during calls route customers effectively to the live agent who is best equipped to handle the customer's issue.

Furthermore, telephone, digital and other non-brick-and-mortar platforms may help banks serve vulnerable populations. For example, online and other digital tools allow banks to serve customers who lack reliable access to a car or public transportation or who do not wish to enter a bank branch because of risk of COVID-19 (or other disease) transmission, particularly customers who are immunocompromised or otherwise at high risk for complications should they contract COVID-19 or another transmissible illness.

Online and other digital tools also allow customers to access customer service without having to travel to specific locations at particular times during the workday, which is difficult for many workers. The ready availability of these alternative channels also enables customers who wish to involve family members or other trusted individuals in their interactions with their bank to do so. For example, some customers need or want family members or other trusted individuals to help them review or submit information, provide advice, or help them navigate language barriers. Likewise, technological advances in customer service have enabled banks to provide improved assistance in languages other than English for customers requiring such support.

Moreover, financial regulatory agencies including the CFPB have recognized that using AI/ML tools to evaluate alternative data can benefit consumers by substantially increasing credit access.[22] For example, in 2019, the CFPB and the banking agencies issued a joint statement noting the benefits that using alternative data may provide to consumers, such as expanding access to credit and enabling consumers to obtain additional products and more favorable pricing and terms:

---

[20] *U.S. Retail Banks Nail Transition to Digital during Pandemic, J.D. Power Finds*, J.D. Power (April 27, 2021), available at: https://www.jdpower.com/business/press-releases/2021-us-retail-banking-satisfaction-study.

[21] A survey by Morning Consult and the American Bankers Association published in October 2021 found that during the pandemic, the frequency of digital channel use increased, while branch banking fell, and that consumers were still using mobile apps more than any other channel to manage their bank accounts. American Bankers Association, "National Survey: Bank Customers Turn to Mobile Apps More Than Any Other Channel to Manage Their Accounts: COVID-19 accelerated move toward digital banking channels" (October 25, 2021), *available at* https://www.aba.com/about-us/press-room/press-releases/bank-customers-turn-to-mobile-apps-more-than-any-other-channel-to-manage-their-accounts#.

[22] Throughout its history, the CFPB has supported the use of AI/ML and alternative data as a way to expand credit access. For example, in 2017 the CFPB sought public feedback on the benefits and risks of tapping alternative data sources to make lending decisions about consumers whose lack of credit history might otherwise block opportunities. Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process, 82. Fed. Reg. 11,183 (Feb. 21, 2017)..

> The agencies recognize that use of alternative data may improve the speed and accuracy of credit decisions and may help firms evaluate the creditworthiness of consumers who currently may not obtain credit in the mainstream credit system. Using alternative data may enable consumers to obtain additional products and/or more favorable pricing/terms based on enhanced assessments of repayment capacity. These innovations reflect the continuing evolution of automated underwriting and credit score modeling, offering the potential to lower the cost of credit and increase access to credit.[23]

The CFPB's own research into mortgage servicing wait times affirms that banks provide outstanding customer service. A CFPB analysis found that, during the COVID-19 pandemic, mortgage borrowers waited on average less than 3 minutes to speak with a representative from the moment the call entered the servicer's interactive voice response system.[24] These short wait times are particularly impressive in light of the complicated nature of mortgage servicing calls, which often require lengthy conversations between borrower and servicer.

Recent polling data confirms that consumers are happy with the service provided by their bank. An ABA October 2021 survey shows that 97% of customers rank their bank's customer service as "excellent," "very good," or "good."[25] A February 2022 ABA/Morning Consult survey found that 9 in 10 Americans with a bank account (89%) say they are "very satisfied" or "satisfied" with their primary bank, and 88% agree they have multiple options when selecting products and services such as bank accounts, loans, and credit cards.[26] These findings are consistent with individual banks' customer surveys, as reported confidentially to ABA. One regional bank reported that customers gave similarly high customer satisfaction scores when visiting a branch (a score of 4.71 out of 5) as compared to using a mobile channel to access banking services (a score of 4.24 out of 5 points), based on the bank's May 2022 data. A midsize bank reported that, for the period of January 1, 2022, through June 24, 2022, customers gave the bank an average score of 9.06 out of 10 when asked about the ease of reaching a bank representative by phone;

---

[23] Interagency Statement on the Use of Alternative Data in Credit Underwriting (December 3, 2019), *available at* cfpb_interagency-statement_alternative-data.pdf (consumerfinance.gov).

[24] Bureau of Consumer Fin. Prot., Mortgage Servicing COVID-19 Pandemic Response Metrics: New Observations from Data Reported by Sixteen Servicers for May-December 2021, at 8 (2022), *available at* https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-covid-19-pandemic-response-metrics_report_2022-05.pdf.

[25] American Bankers Association, *Consumer Bank Satisfaction Infographic* (Oct. 15, 2021), *available at* https://www.aba.com/news-research/research-analysis/consumer-bank-satisfaction.

[26] *See, e.g.*, American Bankers Association, *ABA Unveils New Consumer Polling Data on Major Bank Policy Issues at 2022 Washington Summit* (Mar. 8, 2022), *available at* https://www.aba.com/about-us/press-room/press-releases/aba-unveils-new-consumer-polling-data-on-major-bank-policy-issues-at-2022-washington-summit. In addition, 48% of consumers trust banks the most to keep their information secure, compared to the only 13% of consumers who trust non-bank payment providers to keep their information secure. American Bankers Association, *Consumer Bank Satisfaction Infographic* (Oct. 15, 2021), *available at* https://www.aba.com/news-research/research-analysis/consumer-bank-satisfaction.

similarly, customers gave the bank a score of 9.09 out of 10 when asked to rate the overall level of satisfaction with the customer's experience placing a call to the bank.

According to the CFPB's 2021 Consumer Response Annual Report, when a consumer had a complaint about the service provided by a financial institution, banks and other companies "overwhelmingly met the timeliness expectation in their responses."[27] In fact, companies provided a timely response to 99% of the complaints that the CFPB forwarded to them for review in 2021.[28] It is disingenuous for the CFPB to commend banks for responding to the overwhelming majority of complaints in a timely manner while claiming that banks provide poor customer service. Moreover, very few bank customers submit a complaint to their bank. Of the 124 million households with a bank account,[29] only 0.03% submitted a complaint about their account.[30]

Collectively, these findings refute the CFPB's flawed premise that banks provide poor customer service.

II. The CFPB Paints an Inaccurate Picture of the Banking Industry

A. The CFPB inaccurately characterizes the banking industry as consolidated and overlooks how bank mergers often preserve customer choice, thereby strengthening customer service

The RFI's assertions that the banking industry is increasingly consolidated, and that such consolidation has degraded customer service, is inaccurate. The RFI states "[i]ncreasing market concentration in the financial services industry may present challenges in implementing an inclusive relationship banking model"[31] and "[b]ank consolidation has had mixed results for consumers and customer service experiences."[32] The CFPB further contends that a decrease in smaller banks and credit unions in rural communities is contributing to banking deserts and a decrease in relationship banking.[33] The CFPB thus frames its evaluation of customer service and relationship banking as a comparison between big banks and smaller banks.

---

[27] Bureau of Consumer Fin. Prot., Consumer Response Annual Report for 2021, at 17 (2022), *available at* https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf.

[28] *Id.*

[29] Fed. Deposit Ins. Corp., How America Banks: Household Use of Banking and Financial Services (2021), *available at* https://www.fdic.gov/analysis/household-survey/index.html.

[30] In the RFI, the Bureau stated that, last year, it received 37,400 complaints about a checking or savings account. If each complaint was submitted by a separate household, only 0.03% of the 124 million households with a bank account submitted a complaint about the bank account.

[31] Request for Information Regarding Relationship Banking and Customer Service, 87 Fed. Reg. 36,828, 36,829 (Jun. 21, 2022).

[32] *Id*.

[33] *Id*.

As summarized in the response by BPI, CBA, and the Mid-Size Bank Coalition of America to the Federal Deposit Insurance Corporation's request for information and comment on rules, regulations, guidance, and statements of policy regarding bank merger transactions,[34] the U.S. banking industry has maintained essentially unchanged concentration levels at the local level for over 25 years, [35] and national concentration has been trending downward in recent years.[36] The industry is unconcentrated at the national level, as demonstrated by various measures.[37] Additionally, between 1990 and 2020, according to FDIC data, the number of bank branches increased by approximately 40%, from 56,270 to 74,943.[38] This means that customer access to a bank branch in communities across the country is considerably easier today than 30 years ago. In a 2021 study, the Federal Reserve Bank of Cleveland concluded "on average, urban consumers have not experienced a significant change in their ability to access a full-service bank branch, and rural consumers saw full-service branches become more accessible. Overall, this analysis suggests that even though consolidation may create fewer choices of banking institutions, it provides consumers with access to larger networks of branches and has caused no significant change in a customer's physical proximity to branches on average."[39]

Further, while branches certainly do play a role in rural communities, 61% of rural customers did not visit branches last year, and another 27% visited branches less than once a week.[40] This information directly counters the narrative that consolidation has reduced access to banking

---

[34] *See* BPI, CBA, and MCBA, *Letter to the Federal Deposit Insurance Corporation regarding Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions (RIN 3064-ZA31)* (May 31, 2022), *available at* https://www.consumerbankers.com/sites/default/files/BPI%20CBA%20MBCA%20-%20Comment%20Letter%20re%20FDIC%20RFI%20on%20Bank%20MA%20%28May%202022%29%20%20final.pdf.

[35] For an in-depth discussion of the unchanged concentration levels at the local level, *see* BPI and MCBA, *Letter to the Department of Justice regarding enforcement policy respecting bank mergers* (Feb. 10, 2022), https://bpi.com/wp-content/uploads/2022/02/BPI-Responds-to-DoJ-Review-of-Competitive-Effects-of-Bank-Mergers.pdf.

[36] ABA *et al.*, *Letter to Bureau of Consumer Financial Protection regarding Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services* 4 (Apr. 11, 2022), *available at* https://www.aba.com/advocacy/policy-analysis/fees-imposed-by-providers-of-consumer-financial-products (observing that national concentration in the banking sector has been trending downward in recent years).

[37] *See* BPI, *Five Important Facts about the Competitiveness of the U.S. Banking Industry* (Feb. 24, 2022), *available at* https://bpi.com/five-important-facts-about-the-competitiveness-of-the-u-s-banking-industry/. The four-digit North American Industry Classification System (NAICS) is a standard used by Federal statistical agencies to define a given industry group. The U.S. Census CFPB sample includes 274 four-digit industry classifications.

[38] *See* FDIC, *Historical Data*, *available at* https://banks.data.fdic.gov/explore/historical?displayFields=STNAME%2CTOTAL%2CBRANCHES%2CNew_Char&selectedEndDate=2020&selectedReport=CBS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc.

[39] Kyle Fee and Erik Tiersten-Nyman, *Has Bank Consolidation Changed People's Access to a Full-Service Bank Branch?*, FEDERAL RESERVE BANK OF CLEVELAND, (October 7, 2021), https://www.clevelandfed.org/en/newsroom-and-events/publications/community-development-briefs/db-20211006-has-bank-consolidation-changed-peoples-access.aspx.

[40] BCG, *REBEX Consumer Survey 2021 – US Report* (July 2021). The study was conducted in May-June 2021.

services and that consumers prefer access to customer service through physical branches. As demonstrated extensively in this letter, consumers have a wide range of preferences and needs, and seek banking services and customer service assistance through the appropriate channel, including in-person, phone, online and other alternatives.

Indeed, bank mergers often preserve customer choice that market forces might otherwise constrict. As long ago as 1995, the Assistant Attorney General in charge of the Antitrust Division at the Department of Justice noted that "[t]o the extent that a bank merger allows the merging firms to achieve significant economies of scale or scope, consumers may benefit from lower costs and/or improved services, and our competitive analysis takes into account such factors."[41]

Therefore, mergers may strengthen the ability of banks to achieve economies of scale that allow them to continue serving customers in communities that have experienced population loss. In these circumstances, the merger enhances, rather than degrades, the customer service provided.

B. The CFPB's inaccurate picture of the banking industry could lead customers to turn to less regulated nonbank providers

As noted previously, while consumers report high levels of satisfaction with their banks,[42] the CFPB's mischaracterization of the level of customer service provided by banks could lead consumers to seek consumer financial products and services from nonbanks providing the same or similar services that are not subject to the same level of robust and extensive oversight and regulation. Indeed, banks are required to develop robust compliance management programs that, among other features, ensure that customers' inquiries and complaints are addressed in a timely manner and are subject to regular Federal examination on the bank's responses to customer inquiries and complaints.[43]

[41] Anne K. Bingaman, Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, Antitrust and Banking (Nov. 16, 1995), *available at* https://www.justice.gov/atr/speech/antitrust-and-banking.

[42] For example, one study found that nine out of 10 account holders are "very satisfied" or "satisfied" with their primary bank. American Bankers Association, "Consumer Bank Satisfaction Infographic" (Oct. 15, 2021), *available at* https://www.aba.com/news-research/research-analysis/consumer-bank-satisfaction. This survey also showed that 48% of consumers trust banks the most to keep their information secure, compared to only 13% of consumers who trust non-bank payment providers to keep their information secure.

[43] For example, the FDIC's Consumer Compliance Examination Manual provides that "An institution should be prepared to handle consumer complaints promptly. Procedures should be established for addressing complaints, and individuals or departments responsible for handling them should be designated and known to all institution personnel to expedite responses . . . Complaints may be indicative of a compliance weakness in a particular function or department." FDIC Consumer Compliance Examination Manual (Oct. 2019), II-3.4-3.5, *available at* https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/compliance-examination-manual.pdf. Similarly, the OCC issued guidance in 2004 providing that the OCC "expects national banks to take steps to resolve consumer complaints fairly and expeditiously regardless of the source of the complaint." OCC News Release 2004-16 "OCC Guidance Clarifies that National Banks Should Act Promptly To Resolve Consumer Complaints Forwarded by State Agencies" (March 1, 2004), *available at* https://www.occ.gov/news-issuances/news-releases/2004/nr-occ-2004-16.html. .

Furthermore, banks have extensive experience responding to customers' needs and invest significant time and money in developing robust customer support departments. By contrast, nonbank fintechs lack such experience and may not have made similar time and resource investments in customer service. The diffuse structure of tech companies may significantly impair a customer's ability to obtain assistance or support from the company. Also, some nonbank financial companies provide customer service through only one or a limited number of channels, while banks allow customers to access support through numerous channels. Indeed, some customers have reported very negative customer service experiences at nonbanks.[44]
The lack of direct, regular federal oversight of these firms places consumers at risk of harm, particularly as fintechs' presence in consumer financial markets continues to grow.[45] The CFPB should exercise its authority to protect consumers by supervising the expanding segment of financial services markets that are unsupervised, including through use of the CFPB's authority under section 1024 of the Dodd-Frank Act to extend its supervisory authority to the larger participants in markets for other consumer financial products or services.[46]

* * *

[44] For example, last year consumer complaints about the customer service provided by Robinhood, a fintech trading app, rose substantially, and Chime, a nonbank fintech offering checking accounts, faced numerous customer complaints about customers having their accounts closed and subsequently being unable to access their funds. Rudegeair, Peter, "Robinhood Has a Customer Service Problem," Wall Street Journal (April 28, 2021), *available at* https://www.wsj.com/articles/robinhood-has-a-customer-service-problem-11619602202; Kessler, Carson, "A Banking App Has Been Suddenly Closing Accounts, Sometimes Not Returning Customers' Money," ProPublica (July 6, 2021), *available at* https://www.propublica.org/article/chime.

[45] For example, fintechs now issue nearly half of all personal loans, up from just 22% in 2015. Tatham, Matt, Personal Loan Debt Continues Fast-Paced Growth, EXPERIAN (Oct. 14, 2019), *available at* https://www.experian.com/blogs/ask-experian/research/personal-loan-study/; *see also* Taskforce on Federal Consumer Financial Law Report, p. 375 *available at* https://files.consumerfinance.gov/f/documents/cfpb_taskforce-federal-consumer-financial-law_report-volume-1_2021-01.pdf. In addition, Chime provides mobile banking services to 12 million customers, equal to that of the eighth largest bank in the United States. Shevlin, Ron, *Challenger Bank Chime Reaches The 12 Million Customer Mark*, FORBES, Feb. 1, 2021, *available at* https://www.forbes.com/sites/ronshevlin/2021/02/01/challenger-bank-chime-hits-12-million-customer-mark/?sh=108cc0ac23f5; *About BMO Harris,* BMO Harris, *available at* https://www.bmoharris.com/main/about-us/.

[46] 12 U.S.C. § 5514(a)(1)(B), (a)(2). The Bureau has issued a rule defining larger participants in the consumer reporting market, and amended the rule over time to include definitions for the consumer debt collection, student loan servicing, international money transfer, and automobile financing markets. 12 C.F.R. §§ 1090.104-1090.108. Relevant markets for which the Bureau may consider defining larger participants include the unsecured consumer lending market, the payment processing market, and the data aggregation market.

BPI, CBA, and ABA appreciate the opportunity to submit this comment to the CFPB in response to the RFI and stand ready to assist the CFPB in ensuring the continued provision of stellar service to, and protection of, consumers.

Sincerely,

Paige P. Paridon

Brian Fritzsche
Vice President/Regulatory Counsel
Consumer Bankers Association

Paige Pidano Paridon
Senior Vice President,
Senior Associate General Counsel
Bank Policy Institute

Jonathan Thessin

Jonathan Thessin
Vice President/Senior Counsel
Consumer & Regulatory Compliance
Regulatory Compliance and Policy
American Bankers Association