**Testimony of John Berlau, Senior Fellow & Director of Finance Policy, Competitive Enterprise Institute**

**Before the House Financial Services Committee, Subcommittee on Financial Institutions**

**Hearing: Enhancing Competition: Shaping the Future of Bank Mergers and De Novo Formation**

**May 14, 2025**

Chairman Barr, Ranking Member Foster, and honorable members of this Subcommittee, thank you for this opportunity to present testimony on behalf of my organization, the Competitive Enterprise Institute (CEI). This is a hearing on the critically important topics of de novo banks and bank mergers that are *both* vital parts of reaching consumers and small businesses in our financial system. In my testimony, I am going to discuss the regulatory barriers preventing the formation of new banks and bank combinations that could benefit American consumers and entrepreneurs.

CEI is a Washington-based free-market think tank, founded in 1984, that studies the effects of regulations on job growth and economic well-being. It is our mission to advance the freedom to prosper for consumers, entrepreneurs, and investors. At CEI, we have long championed private-sector innovation that serves all Americans and have warned about government red tape that contributes to the problems facing the nation's unbanked and underbanked populations in both rural and urban areas.

We have sounded the alarm about Dodd-Frank Section 1075, also known as the "Durbin Amendment," which transferred, through price controls, much of the cost of processing debit cards from retailers—including very large retail chains—to some of the nation's poorest consumers, and which prominent economists have found contributed to more than 1 million Americans becoming unbanked.[1]

We are also concerned about the burdensome regulatory barriers that have been erected since the Financial Crisis of 2008 to the formation of new, or de novo, banks and more recent barriers erected – and now thankfully being knocked down – to bank mergers that would benefit consumers and entrepreneurs. In this testimony, I will speak of the benefits both new banks and bank mergers bring to the financial system and the economy as a whole.

Let me start with de novo banks. In every business sector, new entrants are essential to the functioning of a competitive, free-market economy. As scholars from the Kauffman Foundation of Kansas City, Missouri, have stated in summarizing their research findings: "New and young companies are the primary source of job creation in the American economy. Not only that, but these firms also contribute to economic dynamism by injecting competition into markets and spurring innovation."[2]

In this hearing, I look forward to learning from my fellow witnesses who are recent founders of de novo banks about the innovative financial products and services they are providing to their communities. Previously, to this committee and in my writings, I have pointed to the example of the Bank of Bird-in-Hand in the heart of the Amish country in Pennsylvania as an example of new banks providing practical – if not what many would consider the most technologically sophisticated -- innovations to serve their communities.

---

[1] Todd J. Zywicki, Geoffrey A Manne, and Julian Morris, "Price Controls on Payment Card Interchange Fees: the U.S. Experience," George Mason University Law and Economics Research Paper Series No. 14-18, https://www.law.gmu.edu/assets/files/publications/working_papers/1418.pdf; John Berlau "Free Checking Nearly Extinct Thanks To Dodd-Frank; Will Credit Card Rewards Follow?," Competitive Enterprise Institute Blog, September 28, 2012, https://cei.org/blog/free-checking-nearly-extinct-thanks-to-dodd-frank-will-credit-card-rewards-follow/.

[2] Jason Wiens and Chris Jackson, "The Importance of Young Firms for Economic Growth," Ewing Marion Kauffman Foundation September 24, 2014, https://www.kauffman.org/resources/entrepreneurship-policy-digest/the-importance-of-young-firms-for-economic-growth/.

As many of its Amish customers travel by horse, this bank did everything it could to make them feel welcome. The lanes going to the drive-through window were designed to accommodate horses and buggies, and for those customers who needed to enter the bank for business transactions, a wooden barn-like shelter was built in which they could leave their horses.[3] The trek to the bank is still a long trip when riding in a horse-pulled carriage, so the bank operates mobile branches—called "Gelt buses" after the term for money in the Pennsylvania Dutch dialect of the area—that come to around 20 different locations loaded with both ATMs and bank employees.[4] The bank now operates both physical and mobile bank branches throughout rural Pennsylvania and grew from $17 million to more than $1 billion in assets in less than 10 years.[5]

While the Bank of Bird-in-Hand and the two banks of my fellow witnesses are certainly success stories to be celebrated, they are three of only a handful of new banks approved by the Federal Deposit Insurance Corporation (FDIC) since the 2008 financial crisis. That signals a policy failure.

When the Bank of Bird-in-Hand was opened in 2013, it was the first new bank to receive approval from the FDIC in more than three years. In some of the years following the financial crisis, no new banks were approved.[6] By contrast, in the decades before the crisis, the FDIC approved more than 100 new banks – and sometimes more than 200 – in most years going back to 1961. This was the case even in the late 1980s and early 1990s, at the height of the savings-and-loan crisis.[7]

No doubt there was more than one factor in the stunning drop in the number of new banks per year. The costly provisions of the 2010 Dodd-Frank financial overhaul, which imposed a

[3] "Nice Gig," The Economist, May 31, 2018, https://www.economist.com/finance-and-economics/2018/05/31/the-number-of-new-banks-in-america-has-fallen-off-a-cliff; Tim Mekeel, "New Bank of Bird-in-Hand result of long approval process," Lancaster Online, Updated January 14, 2014, https://lancasteronline.com/business/new-bank-of-bird-in-hand-result-of-long-approval-process/article_3b1f38d1-5125-54e7-8868-794b5fe303fc.html.
[4] "The 'Gelt Bus' Brings Banking-On-Wheels To Amish In Lancaster County," Amish America, March 10, 2021, https://amishamerica.com/gelt-bus-brings-banking-on-wheels-amish-lancaster-county/.
[5] "The Bank of Bird-in-Hand Surpasses the Billion Dollar Mark," News release, September 20, 2022, https://www.businesswire.com/news/home/20220920005253/en/The-Bank-of-Bird-in-Hand-Surpasses-the-Billion-Dollar-Mark.
[6] John Berlau, "A Bird in the Hand and No Banks in the Bush," Issue Analysis No. 3, Competitive Enterprise Institute, July 2015, https://www.cei.org/wp-content/uploads/2015/07/John-Berlau-Why-Competition-Offers-a-Solution-to-Too-Big-to-Fail_0.pdf.
[7] Roisin McCord, Edward Simpson Prescott, and Tim Sablik, "Explaining the Decline in the Number of Banks since the Great Recession," Economic Brief No. 15-03, Federal Reserve Bank of Richmond, March 2015, p. 4, Figure 3, https://www.richmondfed.org//media/richmondfedorg/publications/research/economic_brief/2015/pdf/eb_15-03.pdf.

crushing burden on many existing community banks and credit unions,[8] likely discouraged formation of new banks, and still does so today.

But there was also a new FDIC policy that required de novo banks to put up on filing 8 percent of the assets they projected to have in seven years. For instance, if those forming a bank thought it might have $500 million in assets in seven years, they would have to come up with $40 million in cash before they could open for business. That requirement, noted a letter from the Independent Community Bankers of America and the American Association of Bank Directors, "effectively prevents the formation of de novo banks at all, or only in severely limited circumstances," as such a large amount of upfront capital "is beyond the reach of many in communities where it is virtually impossible to attract capital from outside sources."[9]

Matters on the regulatory front began to improve, but not by much. The FDIC changed the upfront capital policy to a slightly more manageable three-year projection in 2016.[10] Yet even the "high" years after the financial crisis – such as the 15 de novo approvals in 2018 – pale in comparison to the decades before, when as I noted the FDIC approved more than 100 new banks in a typical year.[11] And in 2023 and 2024, the number of de novo banks fell back to the single digits, with just six being approved each year.[12]

That is why legislative efforts such as Chairman Barr's Promoting New Bank Formation Act (HR 478), which passed this committee recently with bipartisan support, are so needed. The Chairman's bill would move federal banking agencies toward a system of phased-in capital that would allow de novo banks to build capital as they gain customers, rather than having to meet a nearly impossible burden for massive amounts of capital upfront. The bill would also give the banking agencies a time limit to approve an application for a new bank or specify where the application falls short and what applicants can do to meet the banking agencies' standards of approval.

---

[8] "Here's What Community Banks and Credit Unions Are Saying About Dodd-Frank," House Financial Services Committee, August 10, 2016, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=400962.

[9] American Association of Bank Directors, "ICBA, AABD Express Concern with Lack of New Bank Charters," News Release, December 12, 2013, http://aabd.org/icba-aabd-express-concern-with-lack-of-new-bank-charters/.

[10] "FDIC Rescinds De Novo Time Period Extension; Releases Supplemental Guidance on Business Planning," News release, April 6, 2016, https://archive.fdic.gov/view/fdic/5121.

[11] Ibid.

[12] Arpita Banerjee and Zuhaib Gull, "Number of new US banks continued to decline in 2024," *S&P Global*, March 26, 2025, https://www.spglobal.com/market-intelligence/en/news-insights/articles/2025/3/number-of-new-us-banks-continued-to-decline-in-2024-88115007#:~:text=Only%20six%20new%20banks%20were,in%20the%20US%20banking%20sector.

Of course, in finance, or any business sector, there always will be risks when a new business forms. However, unduly restricting the emergence of de novo banks poses its own risks to both the vitality and the long-term solvency of the financial system. A lack of new entrants in the banking sector increases the chances a large bank failure could severely curtail the supply of credit and availability of financial services.[13]

As Federal Reserve Governor Michelle Bowman, now President Trump's nominee for the Fed's Vice Chair for Supervision, stated recently: "In my view, the absence of de novo bank formation over the long run will create a void in the banking system, a void that could contribute to a decline in the availability of reliable and fairly priced credit, the absence of financial services in underserved markets, and the continued shift of banking activities outside the banking system."[14] Both Congress and the bank regulatory agencies need to work to fill this void through common-sense deregulatory measures to remove the barriers to de novo banks.

And both Congress and the regulatory agencies also need to remove unnecessary red tape that hampers beneficial mergers of existing banks. Changes in policies on mergers pushed through last year at the FDIC and the Office of the Comptroller of the Currency – both of which have thankfully begun to be reversed in the new administration – would have made mergers of banks much more difficult and time-consuming. These policy changes, if allowed to stand, would have reduced consumer welfare and likely harmed the safety and soundness of many banks as well.

Mergers and Acquisitions, or M&A as the process is often called, are not per se problematic or anticompetitive. They should primarily raise concern when done in reaction to bad policy, as was the case when many banks were forced to combine to survive the compliance costs of Dodd-Frank and other regulatory burdens.[15] However, M&A is in many cases a healthy part of capitalism's competitive process that brings innovation and dynamism to industries and the benefits of greater choices and lower prices to consumers.

---

[13] Berlau, pp. 5-6.

[14] Michelle W. Bowman, "Brief Remarks on the Economy, Monetary Policy, and Bank Regulation," Speech, June 27, 2024, https://www.federalreserve.gov/newsevents/speech/bowman20240627a.htm.

[15] Allison Nicoletti, "Why Dodd-Frank Increased Banking Industry Consolidation," *Knowledge at Wharton*, September 5, 2017, https://knowledge.wharton.upenn.edu/podcast/knowledge-at-wharton-podcast/banking-industry-acquisitions/.

As I have written recently: "A 'new juggernaut' is often exactly what's needed to bring lower prices and other benefits to consumers and entrepreneurs."[16]

Restricting bank mergers often has the opposite of its intended effects. It harms the ability of community and regional banks to combine and compete with megabanks. Former FDIC Chair Sheila Bair and former FDIC Vice Chair Thomas Hoenig wrote last year that the FDIC's proposed policy statement to curb bank mergers would have had "a chilling impact on positive M&A banking activity, including among regional banks where consolidation could strengthen their ability to compete with the megabanks." They noted that "the unintended consequence … could be to reduce, not promote, competition in the banking industry."[17]

Anti-merger rules would also harm the safety and soundness of the U.S. financial system. Many banking scholars as well as bank regulators have recognized M&A as essential for keeping banks on solid financial footing. As Bair and Hoenig wrote: "Encouraging bank M&A has been an important, and essential tool, used by the FDIC and other bank regulators in stabilizing the banking system and reducing the number of bank failures. Acquisitions by strong banks of weaker ones can prevent failures, while protecting communities from the disruption of banking services that inevitably comes with the liquidation of a failed bank."[18]

Both mergers of existing businesses and the creation of new businesses are essential parts of a competitive market and a competitive financial system in which a variety of entrepreneurs create products and services for a variety of consumers, enabling a financial system and an economy that is resilient and beneficial to all Americans.

Thank you again for inviting me to testify, and I look forward to your questions. Please also feel free to follow up with me at John.Berlau@cei.org

*Mr. Berlau gratefully acknowledges the assistance in preparing this testimony of his CEI colleagues Iain Murray and Patricia Patnode.*

---

[16] John Berlau, "Critics of Capital One–Discover Merger Are Missing the Elephants," *National Review*, March 19, 2024, https://www.nationalreview.com/2024/03/critics-of-capital-one-discover-merger-are-missing-the-elephants/.

[17] Comment letter of Sheila Bair and Thomas Hoenig, June 7, 2024, https://www.fdic.gov/resources/regulations/federal-register-publications/2024/2024-proposed-policy-on-bank-merger-transactions-3064-za31-c-004.pdf.

[18] Ibid.