Proposed Rescission and Reinstatement of Statement of Policy

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Jennifer Jones, Senior Counsel and Deputy Executive Secretary
Attention: Comments/Legal OES (RIN 3064-ZA45)
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

Re: *Proposed Rescission and Reinstatement of Statement of Policy*

Dear Ms. Jones,

The Conference of State Bank Supervisors[1] ("CSBS") supports the Federal Deposit Insurance Corporation's ("FDIC") proposed rescission of its 2024 "Final Statement of Policy on Bank Merger Transactions" ("Final SOP").[2]

The Final SOP[3] established vague and subjective criteria that would have likely resulted in a less predictable, more costly, and lengthier mergers and acquisitions process.[4] State regulators also support the FDIC's plan to reevaluate its bank merger review framework and to issue a future proposal on its regulations implementing the Bank Merger Act ("BMA").[5] CSBS recommends that the FDIC address the following issues in a future bank merger proposal.[6]

I. Establish a *De Minimis* Exception for Mergers Involving Small Local Banks

Many rural areas have a limited number of small banks that represent the entire physical banking presence in the community. This often leads to rural markets being deemed highly concentrated, which can impede in-market mergers between small banks due to anticompetitive concerns. The result is often a small, rural bank selling to a larger, out-of-market bank with fewer ties to the local community. To preserve local banking options, state regulators recommend that the FDIC establish a *de minimis* exception to allow small banks to merge in highly concentrated rural markets.

II. Modernize the Competitive Effects Analysis

Going forward, the FDIC should more fully consider competition from nonbank financial institutions, credit unions, savings institutions, Farm Credit Associations, and other financial services firms. These entities compete directly with banks for deposits and/or loans, but the Herfindahl-Hirschman Index ("HHI") – the measure currently used to calculate market share – does not fully incorporate them in its analysis. In addition, the FDIC should establish transparent and objective standards for measuring competition from other financial firms. Banks should have a clear understanding of how the FDIC will capture and incorporate additional financial firms in its competitive effects analysis.[7]

III. Preserve the HHI Safe Harbor Threshold

While the HHI has shortcomings, it serves as a widely known measure for evaluating market concentration. In addition to revamping the HHI itself, the FDIC should preserve the HHI safe harbor threshold since it provides a level of certainty by which mergers are presumed to not be anticompetitive.[8]

IV. Reevaluate the Role of Summary of Deposits ("SOD") Data

The FDIC's SOD methodology results in a distorted view of a local market's deposit landscape, especially in the age of ubiquitous online banking.[9] This is particularly problematic since SOD data is the primary input for the HHI calculation that evaluates market concentration. The FDIC should either revise its SOD methodology or deemphasize the use of this flawed metric when measuring market concentration. In exploring possible changes to the SOD reporting methodology, we encourage the FDIC to engage with financial institutions and their third-party vendors to ensure that the benefits are clearly articulated and the collection and reporting burden is appropriately minimized.

V. Incorporate State Views in Bank Merger Reviews and Align the Agencies' BMA Review Processes

The FDIC could streamline its merger review process by collaborating more closely with state regulators, since both states and the FDIC have similar statutory mandates to review proposed mergers in accordance with their respective state or federal laws.

Additionally, CSBS recommends that the three federal banking agencies and the U.S. Department of Justice ("DOJ") jointly develop streamlined and coordinated processes for conducting bank merger reviews.[10]

Conclusion

State regulators support the rescission of the Final SOP and look forward to a future FDIC proposal to revise the bank merger framework. CSBS recommends incorporating the changes outlined above to facilitate more objective, updated, and streamlined merger reviews that enable growth and the long-term stability of community banks and the broader financial system.

Sincerely,

Brandon Milhorn
President and CEO

Endnotes

1 CSBS is the nationwide organization of state banking and financial regulators from all 50 states, the District of Columbia, and the U.S. territories.

2 FDIC, Proposed Recission and Reinstatement of Statement of Policy; Request for Comment, *Statement of Policy on Bank Merger Transactions*, 90 Fed. Reg. 11679 (March 11, 2025).

3 FDIC, Final Statement of Policy, *Final Statement of Policy on Bank Merger Transactions*, 89 Fed. Reg. 79125 (Sept. 27, 2024).

4 *See* CSBS, Comment Letter Re: *Request for Comment on Proposed Statement of Policy on Bank Merger Transactions* (June 17, 2024).

5 FDIC, Press Release, *FDIC Board of Directors Approves Proposal to Rescind 2024 Bank Merger Policy Statement* (March 3, 2025).

6 CSBS has recommended these actions in previous comments. *See, e.g.*, CSBS, Comment Letter Re: *Request for Comment on Rules, Regulations, Guidance, and Statement of Policy on Bank Merger Transactions* (June 3, 2022).

7 The Final SOP contemplated incorporating additional financial firms' impact when evaluating market competition but did not provide a clear process or specific criteria for how it would do so. *Supra* note 3, at 79136.

8 *Supra* note 2, at 11681. ("The FDIC normally will not deny a proposed merger transaction on antitrust grounds (absent objection from the Department of Justice) where the post-merger HHI in the relevant geographic market(s) is 1,800 points or less or, if it is more than 1,800, it reflects an increase of less than 200 points from the pre-merger HHI.").

9 SOD data presents deposits based on the location of the *branch* at which deposits are *booked*, rather than the actual location of the *depositor*. The recent RFI on Deposits may inform better approaches for reporting deposits data. *See* FDIC, Request for Information, *Request for Information on Deposits*, 89 Fed. Reg. 63946 (Aug. 6, 2024).

10 Of course, that will depend on the extent to which the three federal banking agencies and DOJ's respective policies align in the future. Changes in 2024 to the OCC's and DOJ's respective bank merger regulations and guidelines raise similar concerns to those of the FDIC's 2024 Final SOP. Interagency alignment on bank merger policy is an important goal, but it is critical that interagency consensus and alignment occur around the *right* policy. *See* OCC, Final Rule, *Business Combinations Under the Bank Merger Act*, 89 Fed. Reg. 78207 (Sept. 25, 2024). *See also* DOJ, *2024 Banking Addendum to 2023 Merger Guidelines* (Sept. 17, 2024).

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202.296.2840
newsroom@csbs.org
1129 20th Street, N.W., 9th Floor, Washington, DC 20036