Bank Mergers and De Novo Formation Letter to House Committee

COMMENT LETTER

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May 14, 2025
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The Honorable French Hill

Chairman

Committee on Financial Services

U.S. House of Representatives

Washington, D.C. 20515

The Honorable Maxine Waters

Ranking Member

Committee on Financial Services

U.S. House of Representatives

Washington, D.C. 20515

The Honorable Andy Barr

Chairman, Subc. on Financial Institutions

Committee on Financial Services

U.S. House of Representatives

Washington, D.C. 20515

The Honorable Bill Foster

Ranking Member, Subc. on Financial Institutions

Committee on Financial Services

U.S. House of Representatives

Washington, D.C. 20515

Dear Chairman Hill, Ranking Member Waters, and Representatives Barr and Foster,

The Conference of State Bank Supervisors ("CSBS") 1 submits this letter for the record associated with the House Financial Services Committee hearing entitled, *Enhancing Competition: Shaping the Future of Bank Mergers and De Novo Formation*, held on May 14, 2025.

New entrants and beneficial exits are critical components of a healthy banking industry. These market activities support broader financial stability and help provide consumers with continued access to a variety of responsible financial products and services.

Unfortunately, federal policy often acts as an impediment to both healthy merger activity and *de novo* bank formation. The current federal regulatory and supervisory environment has also increased the costs and complexity of operating an existing bank or starting a new franchise, further restricting returns and diminishing banking as an attractive way to deploy investment capital.

To support investments in new banks and business models, we have encouraged the federal banking agencies to remove unnecessary limits on *de novo* bank formation and beneficial mergers, appropriately tailor regulatory and supervisory expectations to the size, complexity, and risk profile of individual institutions, and help foster innovation and non-traditional business models. These reforms will allow banks – both existing and new – to better serve our communities and promote economic growth. We appreciate the Committee's support for these efforts, and continued oversight of the federal banking agencies on these matters.

Improve the Bank Merger Process

State regulators applaud the Committee's efforts to appropriately streamline the bank merger process. To that end, CSBS recommends revising the "competitive effects" statutory factor [2] to permit more local banks to merge with one another – a barrier that disproportionately affects small, rural institutions. These rural communities often have only a limited number of small banks that represent the entire physical banking presence – leading to markets that are deemed highly concentrated for purposes of bank merger policy. This regulatory determination can impede in-market mergers between small banks [3] and force their acquisition by larger, out-of-market banks with fewer ties to the local community.

To keep capital local, state regulators propose statutory changes that would exempt transactions from the "competitive effects" statutory factor when the resulting institution would have less than $10 billion in total assets. In addition, that threshold should be indexed to inflation to account for economic growth and changes in industry composition. *Appendix A* provides proposed amendments to achieve this goal.

Congress should also consider additional steps to improve the bank merger framework:

- Ensure nonbank financial institutions, credit unions, savings institutions, and Farm Credit Associations are fully incorporated into any "competitive effects" analysis.
- Preserve the Herfindahl-Hirschman Index safe harbor for transactions that are unlikely to raise antitrust concerns – promoting certainty for institutions considering a merger.
- Revisit the use of Summary of Deposits data when evaluating market competition since the data provides a distorted view of the deposits landscape.
- Promote a streamlined merger review process through closer coordination and consultation between state and federal regulators on merger applications. [4]

Promote *De Novo* Activity

Over the past decade, the United States has lost nearly 2,000 community banks, while only 62 *de novo* community banks opened over the same period. As chartering authorities, state regulators see how the absence of new bank formation can harm communities across the country. The U.S. economy and financial system need new banks to fuel economic growth and meet American businesses' and consumers' diverse financial needs.

Newly formed banks need sufficient capital tailored to their business models and risk profiles. A new bank typically loses money in its early years as management works to execute its business plan and generate revenue to offset staff and technology costs. Attracting additional investment capital while operating at a loss would be

challenging and could unnecessarily distract management's attention from the important task of running the institution. Indeed, allowing banks to open with inadequate capital could discourage initial investors as a bank's viability would depend on raising additional capital before profitability has been achieved.

To encourage new bank formation, CSBS recommends streamlining the *de novo* application and approval process. It can take many months and countless iterations to secure regulatory approval to create a new bank. Long wait times and a lack of responsiveness from regulators can chill the bank formation process and encourage available capital to migrate to other investments.

Similarly, excessive regulatory skepticism and scrutiny of innovative bank business models has further discouraged new entrants and capital investments. Encouraging the federal banking agencies to support *de novo* bank formation by improving the timeliness of their review and reevaluating their approach to innovative business models would yield immediate benefits. Safety and soundness requirements, openness to innovation, and timely application reviews need not be at odds.

Conclusion

CSBS encourages you to address statutory and regulatory barriers that impede rural community bank mergers and chill new and innovative business models. Community banks are critical to meeting the needs of local economies, and policies that prevent growth and innovation weaken the viability of the community bank business model and the continued provision of local and specialized financial services.

CSBS remains committed to working with you to support community banks, grow our nation's economy, protect our consumers, and strengthen the dual banking system.

Sincerely,

Brandon Milhorn
President and CEO

Appendix A – Proposed Amendments Regarding Bank Merger Transactions

Bank Merger Act, as codified in 12 U.S.C. § 1828(c)(5)

(C) Presumption of No Anti-Competitive Effect. A proposed merger transaction that results in an institution with less than $10 billion in assets is presumed not to substantially lessen competition, nor to tend to create a monopoly, nor restrain trade in any other manner. The aforementioned asset threshold shall be adjusted annually and published by the appropriate Federal banking agency, based on the year-to-year change in the average of the United States Gross Domestic Product Implicit Price Deflator, as computed and published by the Department of Commerce before March 15 of the calendar year.

Bank Holding Company Act, as codified in 12 U.S.C. § 1842(c)(1)

(C) Presumption of No Anti-Competitive Effect. A proposed acquisition, merger, or consolidation that results in a bank holding company with less than $10 billion in assets is presumed not to substantially lessen competition, nor to tend to create a monopoly, nor restrain trade in any other manner. The aforementioned asset threshold shall be adjusted annually and published by the appropriate Federal banking agency, based on the year-to-year change in the average of the United States Gross Domestic Product Implicit Price Deflator, as computed and

published by the Department of Commerce before March 15 of the calendar year.

Home Owners' Loan Act, as codified in 12 U.S.C. § 1467a(e)(2)

(F) Presumption of No Anti-Competitive Effect. A proposed acquisition that results in a savings association with less than $10 billion in assets is presumed not to substantially lessen competition, nor to tend to create a monopoly, nor restrain trade in any other manner. The aforementioned asset threshold shall be adjusted annually and published by the appropriate Federal banking agency, based on the year-to-year change in the average of the United States Gross Domestic Price Implicit Price Deflator, as computed and published by the Department of Commerce before March 15 of the calendar year.

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

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  12 U.S.C. §§ 1828(c)(5)(C); 1842(c)(1)(C); 1467a(e)(2)(F).

- 3

  Federal Reserve research shows that the number of rural banks in "highly concentrated markets" has increased since the 2008 financial crisis, reducing merger opportunities under current anticompetitive standards. *See* Andrew P. Meyer, *Market Concentration and Its Impact on Community Banks*, Federal Reserve Bank of St. Louis, Regional Economist (Apr. 12, 2018).

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  CSBS, Comment Letter Re: *Proposed Rescission and Reinstatement of Statement of Policy* (Apr. 9, 2025).

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