November 23, 2026

Jennifer M. Jones
Deputy Executive Secretary
Attention: Comments/Legal OES (RIN 3064—AG18)
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: *Merger Transactions*

Dear Ms. Jones:

The Conference of State Bank Supervisors ("CSBS")[1] provides the following comments on the notice of proposed rulemaking ("proposal") issued by the Federal Deposit Insurance Corporation ("FDIC") titled *Merger Transactions*.[2]

CSBS has long advocated for a modern, objective, and streamlined merger and acquisition ("M&A") framework that serves community banks, particularly in rural areas. State regulators recognize and support the progress the proposal makes towards reforming the M&A framework, particularly the introduction of shorter timelines, new processing categories, and updates to the competitive effects analysis. These changes will enable responsible growth and promote the long-term stability of both community banks and the broader financial system. We recommend additional revisions to the M&A framework that would further advance these same objectives.

I. Proposed Changes to the Herfindahl–Hirschman Index ("HHI") and Competition Analysis

a. Areas of Support

State and federal regulators are responsible for fostering a healthy, diverse, and competitive banking market. The current approach to competition analysis can create significant burdens for mergers between smaller banks that are unlikely to present anticompetitive concerns in their relevant market. The proposed changes would improve and streamline the competitive effects analysis and allow smaller banks to thrive and serve their communities.

i. The proposal makes important improvements to the underlying HHI calculation and helps modernize the competitive effects analysis.

The proposal would reform the underlying HHI calculation by including the deposits of all banks and thrifts, their centrally booked deposits, and credit union shares in an initial HHI screen. State regulators strongly support expanding the HHI calculation to better capture entities that compete directly with

[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. The views presented in this letter may not reflect the policy of individual states.
[2] FDIC, Notice of Proposed Rulemaking, *Merger Transactions*, 91 Fed. Reg. 60196 (Sept. 22, 2026).

banks for deposits. The proposed changes will provide a more accurate assessment of deposit market concentration and facilitate beneficial merger transactions.

ii. States support codifying the HHI safe harbor.

In addition to expanding the underlying HHI calculation to make it more reflective of market competition, state regulators also support the proposed codification of the HHI safe harbor.[3] Transactions that fall beneath the HHI safe harbor thresholds are unlikely to raise antitrust concerns, and codifying this safe harbor would provide more certainty and reduce costs and burdens for mergers between smaller banks.[4]

b. Additional HHI and Competition Analysis Recommendations

i. The FDIC should create a separate safe harbor for rural community bank transactions to preserve access to local banking services.

State regulators have long urged the FDIC to establish a separate safe harbor for rural community bank merger transactions to keep capital local and preserve access to banking services. The current approach to competitive effects analysis can serve as a barrier to smaller bank mergers in rural areas. These banks often represent the entire physical banking presence in the community, which then results in their banking markets being deemed highly concentrated for purposes of competition analysis. Rural community banks are kept from merging together, and consequently, often sell to larger, out-of-market banks with fewer ties to the local community.

CSBS strongly supports the establishment of a safe harbor for rural transactions.[5] Question 109 asks whether the FDIC should "adopt a separate HHI threshold for the safe harbor for merger transactions in rural areas," and if yes, "how should the FDIC delineate qualifying for the rural area safe harbor; what would be an appropriate HHI threshold and why; and how should the FDIC define 'rural area?'"[6] The FDIC should do so by adding a new subparagraph as § 333.5(c)(3)(ii) and redesignating the current proposed subparagraph (ii) as (iii) to read:

> …
> (ii) Absent objection from the Attorney General, a merger filing where (i) either the acquiring institution or the institution to be acquired is a small institution, as defined at § 327.8(e); and (ii) has a main office located in a rural area whose customer base is primarily located in a rural area, as designated by the U.S. Census Bureau; or

[3] *Id.* at 60234 (Proposed § 333.5(c)(3)).
[4] CSBS has called on the FDIC to codify the HHI safe harbor in the past. *See, e.g.*, CSBS, Comment Letter re: *Proposed Rescission and Reinstatement of Statement of Policy* (April 9, 2025); *see also* CSBS, Comment Letter Re: *Request for Comment on Proposed Statement of Policy on Bank Merger Transactions* (June 17, 2024).
[5] *Id*. CSBS also supports the Bank Competition Modernization Act, which was included in the Main Street Capital Access Act (H.R. 6955), which passed the House on July 21, 2026, via a bipartisan vote of 270-155-1. *See* CSBS, *Bank Mergers and De Novo Formation Letter to House Committee* (May 14, 2025).
[6] *Supra* note 2, at 60217-18.

(iii) A corporate reorganization.

We also recommend that the FDIC index the small institution definition at § 327.8(e) going forward to account for inflation and economic growth.

The final rule should codify this safe harbor to ensure small, local banks in rural areas can continue to meet the financial needs of their communities.

ii. The FDIC should expressly consider the competitive effects of additional bank competitors and provide for applicants to request that their market be considered rural for purposes of a rural community bank HHI safe harbor.

The current competition analysis does not adequately account for competition from other bank competitors, including financial technology companies ("fintechs"), Farm Credit Associations ("FCA"), and other nonbank entities. For example, FCAs are major competitors with banks in agricultural lending and hold a comparable share of the agricultural loan market.[7] The FDIC seeks to address this through proposed § 333.5(c)(4), which would provide applicants whose transaction falls outside of the competitive effects safe harbor an opportunity to submit additional competition evidence and/or considerations for FDIC review.[8] The proposed section should go further and expressly state the FDIC will consider FCAs, fintechs, and other nonbank competitors as part of its competition analysis.[9]

Proposed § 333.5(c)(4) would also direct the FDIC to consider alternative geographic markets for transactions that fall outside of the HHI safe harbor threshold.[10] As part of that consideration, the FDIC should allow applicants to petition that their county or market be designated as rural,[11] and thus become eligible for a rural community bank safe harbor.

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[7] Researchers at the Federal Reserve Bank of Kansas City found that hypothetically including FCAs in HHI calculations would result in a lower degree of market concentration and would lead to the approval of more in-market mergers. *See* Charles S. Morris, James Wilkinson, and Eric Hogue, *Competition in Local Agricultural Lending Markets: The Effect of the Farm Credit System*, Fed. Res. Bank of Kan. City Econ. Review (Q4 2015).

[8] *Supra* note 2, at 60218.

[9] State regulators have long called for taking the competitive effects of these entities into account. *See, e.g.,* CSBS, *supra* note 4; *see also* CSBS, Comment Letter Re: *Request for Comment on Rules, Regulations, Guidance, and Statement of Policy on Bank Merger Transactions* (June 3, 2022); *see also* CSBS, Comment Letter to U.S. Department of Justice Re: *Antitrust Division Banking Guidelines Review: Public Comments Topics & Issues Guide* (Oct. 16, 2020).

[10] *Supra* note 2, at 60218.

[11] *See* U.S. Census Bureau's Urban and Rural Geographic Areas. CSBS discourages the use of broad, statistical formulas to designate rural counties. Relying on blanket approaches penalizes counties with unique geographic boundaries or atypical population distributions. CSBS advocated for the Consumer Financial Protection Bureau's ("CFPB") application process under which a person may identify an area that has not been designated by the agency as a rural area for purposes of a federal consumer financial law and apply for such area to be so designated. *See* CFPB, Final Rule, *Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule*, 81 Fed. Reg. 11099 (March 3, 2016). *See also* Testimony of Charles A. Vice, [former] Commissioner of the Kentucky Department of Financial Institutions, on behalf of CSBS, before the Financial Institutions and Consumer Credit Subcommittee re: *The Ability-to-Repay and Qualified Mortgage Standard Final Rule* (June 18, 2013).

II. Application Process and Timeline Improvements

a. Areas of Support

State regulators support the proposal's changes to the application process and timeline improvements, particularly with respect to proposed guardrails around open-ended document requests and new timelines for processing applications. Lengthy review timelines and ambiguous pre-application document requests can chill and discourage M&A activity.

i. CSBS supports establishing guardrails to prevent open-ended document requests.

The merger processing timeline under proposed § 303.64 would begin when the FDIC receives a ''substantially complete'' filing. If a merger application is not considered "substantially complete," the FDIC would have 21 days to inform applicants what they must provide in order to cure the application.[12] If the FDIC does not notify applicants within that 21-day window, the application would be considered "substantially complete" as of the date it was received. This provision would remove ambiguity around what applicants must provide.

ii. The proposal sets appropriate processing timelines for routine application reviews.

CSBS supports the proposed processing timelines for *de minimis*, expedited, and standard merger transactions. These pathways would appropriately shorten overly long review times for many routine transactions.

b. Additional Application Process and Timeline Recommendations

i. Delegate additional M&A decision-making authority to FDIC Regional Offices.

The FDIC should also revise its M&A delegations framework[13] to match its proposed merger process changes and to provide more decision-making authority to FDIC Regional Offices. Delegating more decisions to Regional Offices would improve the speed, certainty, and predictability of M&A application reviews. Regional Offices should be empowered to approve transactions that qualify for rapid or expedited processing, meet one of the HHI or rural community bank transaction safe harbors, and standard transactions in which the resulting institution is below $50 billion and the statutory factors are favorably resolved.

In addition, the FDIC should revise its delegations framework to empower Regional Offices to address any expanded competition analysis under proposed § 333.5(c)(4) for transactions that do not satisfy the HHI or rural community bank transaction safe harbors. FDIC Regional Offices, compared to Washington

[12] The proposal defines "substantially complete" to mean when "the FDIC has received information sufficient to evaluate and make a determination on the statutory factors in section 18(c) of the FDI Act, as described in § 333.5, and to confirm the applicant has complied with its obligations under applicable law." *Supra* note 2, at 60229 (Proposed § 303.61(k)).

[13] FDIC, *Delegations of Authority – Filings: Subpart D, Part 303 of the FDIC Rules and Regulations: Mergers* (updated as of March 20, 2024).

staff or the Board, are better positioned to evaluate and determine the inherently local aspects of this expanded competition analysis, which would include deciding the scope of alternative geographic markets, whether an HHI calculation accurately measures the market's competitive landscape, and other local pro-competition factors and effects of the proposed transaction.

III. Additional Recommendations

a. *The financial stability balancing test should consider the potential benefits of increased competition among the largest institutions.*

The FDIC should recognize enhanced competition with the nation's largest, global systemically important banks ("G-SIBs") as a potential financial stability benefit under its proposed balancing test for mergers that do not meet the financial stability safe harbor. Allowing large regional banks to achieve the scale necessary to compete more effectively with entrenched G-SIBs can strengthen financial system resilience by diversifying the providers of critical financial products, services, and infrastructure; expanding customer alternatives; and reducing dependence on a handful of dominant institutions. Accordingly, the FDIC should consider whether a potential merger would promote a more competitive and diverse banking system and weigh such benefits against any increase in the resulting institution's complexity, interconnectedness, and other potential financial stability risks.

b. *Thresholds should be indexed to nominal gross domestic product ("GDP") or the GDP deflator.*

Consistent with the FDIC's goal to index thresholds to inflation across its rules and regulations, the agency proposes to index several dollar thresholds, including, among others, the dollar amounts referenced in Subpart D of 12 CFR part 303, which outlines the FDIC's procedures for reviewing merger filings under the BMA, and the thresholds for the proposed financial stability safe harbor.[14]

CSBS supports the FDIC's efforts to index dollar thresholds to account for future economic growth and changes in industry composition. However, we recommend using an inflation index such as the nominal GDP or the GDP deflator instead of CPI. These inflation measures better account for broader macroeconomic and industry changes compared to CPI, which measures the average change in prices for a basket of consumer goods and services.

c. *The FDIC should work on an interagency basis to develop a BMA review framework that is aligned across the federal banking agencies and the U.S. Department of Justice.*

State regulators have emphasized that inconsistencies among the federal banking agencies' bank merger frameworks create confusion and uncertainty for banks, increase regulatory burdens, delay application processing, and lead to unpredictable outcomes.[15] We recommend that the federal agencies

[14] *Supra* note 2, at 60232 (Proposed § 314.1).
[15] *Supra* note 4.

and U.S. Department of Justice jointly develop streamlined, coordinated standards and review processes that promote consistency and certainty, while continuing to work closely with state regulators.

d. Cite the FDI Act definition of "interstate merger transaction" in the final rule.

Rather than create a new definition of "interstate merger transaction" at proposed § 303.61(f), the FDIC should simply cite in regulation the existing definition of such transactions found in the FDI Act.[16]

Conclusion

State regulators support the FDIC's proposed revisions to its bank merger framework as they would promote a more objective, modernized merger review process. These improvements would support the long-term stability of both community banks and the broader financial system.

Sincerely,

Brandon Milhorn
President and CEO

[16] 12 U.S.C. § 1828(c)(13)(C)(i). An "interstate merger transaction" is statutorily defined under the FDI Act as a merger transaction involving two or more insured depository institutions that have different home states and that are not affiliates.