FDIC Federal Deposit Insurance Corporation

MEMORANDUM

TO: FDIC Board of Directors

FROM: Ryan Billingsley
Acting Director, Division of Risk Management Supervision

DATE: May 20, 2025

RE: Statement of Policy on Bank Merger Transactions

SUMMARY

Staff presents for adoption by the FDIC Board of Directors (the Board) the attached resolution and *Federal Register* Notice (Notice), which would finalize would finalize the proposal to: (1) rescind the FDIC Statement of Policy on Bank Merger Transactions, previously adopted by the Board and published in the *Federal Register* on September 27, 2024 (2024 Statement of Policy); and (2) reinstate the FDIC Statement of Policy on Bank Merger Transactions that was in effect prior to the 2025 Statement of Policy (Bank Merger Statement of Policy), pending a broader re-evaluation of the FDIC's bank merger review process and any subsequent update of the Statement of Policy on Bank Merger Transactions.

Concur:

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Matthew P. Reed, Acting General Counsel

BACKGROUND

Section 18(c) of the Federal Deposit Insurance Act (FDI Act), which codifies the Bank Merger Act (BMA), prohibits an insured depository institution (IDI) from engaging in a merger transaction except with the prior approval of the responsible agency.[1] The FDIC has jurisdiction to act on merger transactions that solely involve IDIs in which the acquiring, assuming, or resulting institution is an FDIC-supervised institution.[2] The FDIC also has jurisdiction to act on merger transactions that involve an IDI and any non-insured entity, notwithstanding the IDI's charter.[3]

PROPOSAL

The FDIC published a proposal and request for comments on March 11, 2025,[4] to rescind the 2024 Statement of Policy,[5] and reinstate the FDIC's prior Bank Merger Statement of Policy, which was initially adopted in 1998 and amended most recently in 2008.[6]

The rescission of the 2024 Statement of Policy and reinstatement of the Bank Merger Statement of Policy was approved by the Board in light of concerns that the 2024 Statement of Policy added considerable uncertainty to the merger application process. As an example, the 2024 Statement of Policy led to a number of questions regarding when merger applications are required.[7] The 2024 Statement of Policy also deemphasized the use of the Herfindahl-Hirschman Index thresholds in the competitive effects analysis, which had long served as a predictable proxy for determining whether a proposed transaction was anti-competitive,[8] and replaced it with more subjective criteria. In addition, the 2024 Statement of Policy placed an affirmative burden on applicants to demonstrate that a merger transaction would enable the resulting institution to *better* meet the convenience and needs of the community to be served than would otherwise

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[1] 12 U.S.C. § 1828(c).

[2] 12 U.S.C. § 1828(c)(2).

[3] 12 U.S.C. § 1828(c)(1).

[4] 90 FR 11679 (Mar. 11, 2025).

[5] 89 FR 79125 (Sep. 27, 2024).

[6] *See* 63 FR 44761 (Aug. 20, 1998), 67 FR 48178 (Jul. 23, 2002), 67 FR 79278 (Dec. 27, 2002), and 73 FR 8870 (Feb. 15, 2008).

[7] *See e.g.*, *supra* n. 5 at 79134 ("The applicability of the BMA will depend on the facts and circumstances of the proposed transaction. In addition to transactions that combine institutions into a single legal entity through merger or consolidation, the scope of merger transactions subject to approval under the BMA encompasses transactions that take other forms, including purchase and assumption transactions or other transactions that are mergers in substance, and assumptions of deposits or other similar liabilities.").

[8] *See id.* at 79136.

occur in the absence of the merger, without offering any objective or quantifiable criteria regarding how the FDIC would evaluate this factor.[9]

As a result of the 2024 Statement of Policy, a perception developed among stakeholders that the FDIC's merger application review process became less transparent and predictable, leaving prospective applicants unclear about the prospects for approval and the resources and time needed for the merger application process. Accordingly, the FDIC proposed a return to the historical approach, which is well-understood by the public and market participants, while the agency develops future policy. The FDIC proposed to reinstate the Bank Merger Statement of Policy, which is substantively the same as the 2008 document.[10] The Bank Merger Statement of Policy does not address the BMA's statutory factor related to the risk to the stability of the United States banking or financial system, which was added to the BMA by the Dodd-Frank Act in 2010.[11] However, the FDIC's approach when evaluating the financial stability factor in the context of merger applications is publicly available in the FDIC's Applications Procedures Manual.[12]

SUMMARY OF COMMENTS RECEIVED

The FDIC received twelve (12) comment letters from ten (10) commenters on its proposal to rescind the 2024 Statement of Policy and reinstate the Bank Merger Statement of Policy. Two commenters sent two letters each writing separately first to request an extension of the comment period and then to discuss the proposal. Four commenters total requested an extension of the thirty-day comment period. However, the FDIC decided not to extend the comment period given the desire to provide greater clarity for applicants regarding how the

[9] *See id.* at 79138.

[10] The only changes are technical edits updating a room number and a citation.

[11] 12 U.S.C. 1828(c)(5), as amended by Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, § 604(f), 124 Stat. 1376, 1602 (2010).

[12] *See* FDIC Applications Procedures Manual, pp. 4-22—4-23, available at: https://www.fdic.gov/sites/default/files/2024-03/pr19111a.pdf. ("In evaluating a merger application, the FDIC must consider the risk to the stability of the United States banking or financial system (Section 18(c)(5) of the FDI Act). [The FDIC] consider[s] both quantitative and qualitative metrics when evaluating a transaction's impact on financial stability. The following is a non-exhaustive list of quantitative metrics [the FDIC] consider[s]: the size of the resulting firm; the availability of substitute providers for any critical products and services offered by the resulting firm; the interconnectedness of the resulting firm with the banking or financial system; the extent to which the resulting firm contributes to the complexity of the financial system; and the extent of cross-border activities of the resulting firm. In addition to these quantitative metrics, qualitative factors should inform the evaluation of the financial stability factor. Such factors include those that are indicative of the relative degree of difficult in resolving the resulting firm, such as the opaqueness and complexity of the resulting institution's operations.")

FDIC would consider the BMA statutory factors in a timely manner and the nature of the proposal to reinstate the FDI''s prior well-understood, historical policy.

Commenters were evenly divided in terms of expressing support for, and opposition to, the proposed rescission of the 2024 Statement of Policy. Commenters who supported rescission noted familiarity and experience with the Bank Merger Statement of Policy and considered it a positive development to reinstate it while the FDIC conducts a comprehensive review of how it evaluates merger transactions in accordance with the BMA statutory factors.

Commenters who opposed rescission generally stated that doing so would be regressive and unnecessary, and supported the additional review criteria in the 2024 Statement of Policy, such as public hearings for transactions where the resulting institution would have total assets of $50 billion or more.

Several commenters also recommended areas of focus for the FDIC in the context of a future review of merger policy, including: closer adherence to the statutory criteria, reducing automatic bars to approval based on IDIs' supervisory ratings alone, greater interagency coordination, concrete timelines for approval, and improving transparency. Commenters also urged consideration of a streamlined application process for certain transactions. In addition, commenters recommended implementing a *de minimis* exception for mergers of small IDIs in rural markets, modernizing the competitive effects analysis, reevaluating how the FDIC utilizes Summary of Deposits data when measuring market concentration, and ensuring closer coordination with State regulators. These comments will be considered, and the FDIC will seek additional public comments, in connection with future efforts to revise merger policy.

CONCLUSION

Staff believes that the 2024 Statement of Policy has added considerable uncertainty to the merger application process. Accordingly, and in view of the comments received in support of the proposal, staff is seeking the Board's approval to finalize the proposal to rescind the 2024 Statement of Policy and reinstate the Bank Merger Statement of Policy, effective 30 days after the date of publication in the *Federal Register*.

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