



April 10, 2025

Via Electronic Mail

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments/Legal OES (RIN 3064-ZA45)

Re: Request for Comment on Proposal to Rescind Statement of Policy on Bank Merger Transactions (RIN 3064-ZA45)

Ladies and Gentlemen:

The Bank Policy Institute¹ submits this letter in response to the Federal Deposit Insurance Corporation's proposed (i) rescission of the Statement of Policy on Bank Merger Transactions that was issued on September 17, 2024 (the "2024 Policy Statement") and (ii) plan to reinstate the prior Statement of Policy on Bank Merger Transactions that was issued on August 20, 1998 (as amended, the "Prior Policy Statement"), pending the FDIC's development of comprehensive revisions to its merger policy at a later date.²

Consistent with the recommendations in our comment letter relating to the 2024 Policy Statement,³ BPI strongly supports rescinding the 2024 Policy Statement and reinstating the Prior Policy Statement as an interim measure. We also strongly support the FDIC's plans to reexamine its approach to bank merger review, and we welcome the prospect of modernized bank merger guidance. As the FDIC determines how "to comprehensively revise its merger policy,"⁴ BPI recommends four guiding principles for the FDIC to consider:

¹ BPI is a nonpartisan public policy, research and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

² FDIC, Statement of Policy on Bank Merger Transactions, 90 Fed. Reg. 11679 (Mar. 11, 2025) (the "2025 Proposal").

³ BPI, Letter re: Request for Comment on Proposed Statement of Policy on Bank Merger Transactions (RIN 3064-ZA31) (June 14, 2024) (the "2024 BPI Comment Letter"), <https://bpi.com/bpi-comments-on-fdics-bank-merger-proposal/>.

⁴ 2025 Proposal at 11679.

1. Adhere to statutory criteria.

- The Bank Merger Act of 1960 (as amended, the “**BMA**”) clearly specifies the types of merger transactions that require prior approval from the appropriate federal banking agency and the criteria for approval.⁵ The FDIC’s updated merger policy should adhere to the specific requirements and factors set forth in the statute. This approach will ensure that the FDIC acts within its statutory authority and will provide for fair and consistent treatment of bank merger transactions, enabling banks to better assess which transactions would likely be approved and disapproved.
- As we have cautioned before, unpredictable and unduly restrictive merger review discourages beneficial transactions.⁶ If the FDIC follows to the text of the BMA, we believe that the resulting predictability would encourage meritorious transactions, which would enhance the stability and resilience of the U.S. banking system.

2. End supervisory gating.

- Adhering to the BMA would also help to end supervisory gating whereby a less-than-satisfactory rating for an acquirer effectively bars the approval of a proposed transaction, despite the BMA containing no such restriction. The BMA provides that the managerial and financial resources and prospects of the existing and proposed institutions shall be taken into “consideration” in connection with the regulatory assessment of merger applications.⁷ The FDIC’s approach regarding supervisory issues, however, goes far beyond the statutory standard and effectively creates an absolute barrier to approval. For example, for an applicant that is subject to the CAMELS rating system, a “3” rating for management, which often has little to do with the actual quality of management, creates this barrier even if all the financial resources and prospects of the applicant are consistent with approval. Likewise, for holding companies subject to the Large Financial Institution rating system, a Deficient-1 rating for governance and controls, a category that is both sweeping and vague, is also treated as preclusive irrespective of any other factor.
- As long as a proposed transaction would not materially exacerbate the supervisory issue that gave rise to the less-than-satisfactory rating, a banking organization should not be prevented from proceeding with beneficial transactions, including ordinary course internal reorganizations, and growth initiatives. Any future FDIC action should make this framework clear.

3. Coordinate with peer agencies and issue interagency guidance.

- The current system of bank merger review is inefficient. Bank mergers often are reviewed by at least two federal banking agencies, the U.S. Department of Justice (with respect to competitive aspects) and, in many cases, state authorities. Although the federal banking agencies are charged with evaluating bank merger transactions using the same statutory factors, our members have at times received contradictory analyses on similar transactions depending on the reviewing agency. Lack of interagency coordination

⁵ See 12 U.S.C. § 1828(c)(1), (c)(5).

⁶ See 2024 BPI Comment Letter at 4–5, 15.

⁷ 12 U.S.C. § 1828(c)(5)(B).

causes confusion and delay, and it is a significant obstacle to banks assessing their strategic options.

- We urge the FDIC to coordinate with the Federal Reserve and OCC to develop a more cohesive framework as part of its bank merger policy reform, which may include the development and adoption of interagency guidance on the evaluation of the statutory factors and application processing matters. Specifically with respect to the latter, the federal banking agencies should address recurring process-related inefficiencies that banking organizations face as a result of a lack of interagency coordination, including, among other things: (i) differing approaches to accepting an application as “substantially complete,” which starts the clock on the regulatory review period; (ii) the submission of overlapping and duplicative information requests relating to the same transaction and (iii) uncoordinated timing of application approval announcements.⁸
- Additionally, the approaches that regulators use to assess the competitive effects of proposed bank mergers are inconsistent and outdated. Although the Federal Reserve and OCC remain parties to the 1995 Bank Merger Guidelines, the DoJ withdrew from them in September 2024⁹ and the FDIC never formally adopted them. Accordingly, we encourage the FDIC to adopt the 1995 Bank Merger Guidelines as an interim measure and work with the DoJ and the other federal banking agencies to develop a uniform set of competition guidelines applicable to bank mergers that appropriately takes into account the unique forms of competition this industry faces, including from nonbank providers, such as fintechs.

4. Provide concrete timing guidance and commit to reasonable processing times.

- As detailed in our comments to the 2024 Policy Statement,¹⁰ delays in the FDIC’s processing of a BMA application are often unpredictable, extensive, and diverge significantly from the agency’s 60-day target review timeline.¹¹ Prolonged delays and uncertainty jeopardize potential transactions, and also can be detrimental to the health of the banks involved.
- Establishing clear and concrete processing times will alleviate these burdens significantly and provide greater transparency to the bank merger review process. Future FDIC action should incorporate (i) clear timing parameters and (ii) accountability measures for stated timelines (for example, escalation of overdue applications to the FDIC Board for periodic review and staff reporting on delays). For example, as mentioned above in item 3, one of

⁸ Additionally, the federal banking agencies could further simplify and streamline application processing by amending their respective regulations implementing the BMA and the acquisition provisions of the Bank Holding Company Act of 1956 to provide a cohesive listing of transactions not requiring prior approval. For example, the Federal Reserve could expand the list of exempt transactions in 12 CFR § 225.12 to capture a broader set of transactions that do not warrant prior review due to their immaterial nature or scope (e.g., a greater variety of internal reorganization transactions than is currently captured under Section 225.12(d)(3), etc.). The FDIC’s and OCC’s BMA regulations at 12 CFR Part 303 and 12 CFR § 5.33, respectively, should also include a list of exempt transactions that is substantially similar to those enumerated in the Federal Reserve’s regulations.

⁹ DoJ, Justice Department Withdraws from 1995 Bank Merger Guidelines (Sept. 17, 2024), <https://www.justice.gov/archives/opa/pr/justice-department-withdraws-1995-bank-merger-guidelines>.

¹⁰ See 2024 BPI Comment Letter at 4–5, 15.

¹¹ FDIC, Applications Procedures Manual, 4–23, <https://www.fdic.gov/regulations/applications/resources/apps-proc-manual/section-04-mergers.pdf>.

the key issues in application processing is inconsistent timing of acceptance of applications as “substantially complete”. In our members’ experience, the FDIC typically does not deem an application as substantially complete until several months after an application is submitted, following the applicant’s response to numerous follow-up questions and information requests from the FDIC staff. This means that the FDIC’s clock on the target 60-day review timeline does not start for many months post-submission.

- Additionally, we strongly encourage the FDIC to adopt a streamlined application and review process for transactions that, due to their size or nature, do not warrant a full Interagency Bank Merger Act Application review. One particular area where processing times could greatly be improved relates to internal reorganization transactions that require prior approval from the FDIC under the BMA’s statutory framework. Internal reorganizations do not involve expansionary activities and are often undertaken for legal entity rationalization purposes necessary to comply with other regulatory requirements, such as in connection with resolution planning. Another category of transaction that does not warrant the use of full FDIC staff resources for review is where a transaction involves the transfer and/or assumption of a *de minimis* amount of deposits.

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We appreciate the opportunity to comment on the proposal. If you have any questions, please contact the undersigned at [REDACTED].

Respectfully submitted,

[REDACTED]

Sarah Flowers
Senior Vice President
Senior Associate General Counsel
Bank Policy Institute