NCRC
National Community Reinvestment Coalition

March 31, 2025

RE: Comment on RIN 3064–ZA45, Proposed Rescission of FDIC 2024 Statement of Policy on Bank Merger Transactions

To Whom it May Concern:

The National Community Reinvestment Coalition (NCRC) appreciates the opportunity to comment on the proposed rescission of the 2024 FDIC Statement of Policy on Bank Merger Transactions. We strenuously oppose the recission of this important advance in merger policy and enforcement. We urge the FDIC to reconsider its proposal. We also ask the FDIC to extend the short thirty-day comment period, given the profound impact of mergers on communities as detailed in this letter and the need to more broadly inform community stakeholders of the impact of the proposed rescission.

NCRC is a network of more than 700 community-based organizations dedicated to creating a nation that not only promises but delivers opportunities for all Americans to build wealth and attain a high quality of life. We work with community leaders and policymakers to advance solutions and build the will to solve America's persistent racial and socio-economic wealth, income, and opportunity divides, and to make a Just Economy a national priority and a local reality.

Mergers will not confer legally required public benefits when oversight is lax – the 2024 policy FDIC policy statement set a standard for rigorous oversight

Bank mergers are precarious for vulnerable and underserved communities. If agencies do not engage in vigorous enforcement of the Bank Merger Act and related laws when considering bank mergers, low- and moderate-income (LMI) communities and communities of color are likely to experience significant declines in lending, less access to bank branches and services, and higher interest rates and prices for bank services. A paper just released in March of 2025 concludes that mergers of large banks make them less resilient and more suspect to declining performance and loan defaults.[1] Previous papers have found that large bank holding companies decrease small business lending after mergers and that banks generally lend less in LMI tracts after mergers.[2] In

[1]Jeffrey Jou, Teng Wang, Jeffery Y. Zhang, *Bank Lending Fragility After Mergers*, U of Michigan Law & Econ Research Paper No. 24-039, March 10, 2025, 4, the authors find "mergers involving large banks with combined assets of $50 billion or more are expected to book an additional $600 million in loan losses per quarter during a severe economic downturn, whereas smaller mergers under $1 billion barely move the needle on fragility," https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5121787

[2] Josh Silver, Archana Pradhan, and Spencer Cowan, *Access to Capital and Credit in Appalachia and the Impact of the Financial Crisis and Recession on Commercial Lending and Finance in the Region*, report prepared for the

addition, branch closures after mergers would have negative implications for small business lending. NCRC has found that banks with branches in counties are responsible for two thirds of all small business lending in those counties.[3]

In short, bigness is often not better for communities. Large banks can engage in price gouging and other monopolistic practices in communities, particularly those with less post-merger competition.[4] As indicated by the studies cited above, larger banks become more complacent, less innovative, and less receptive to meeting credit needs. The post-merger ennui is more pronounced in traditionally underserved communities in which the least amount of competition exists, and meeting credit needs requires extra effort including the use of non-traditional measures of creditworthiness.

The FDIC 2024 policy statement on mergers responded to the likelihood of banks being less able or willing to meet needs after mergers by requiring banks to demonstrate in specific ways how their mergers would enable them to better meet convenience and needs after mergers. Under the 2024 policy statement, banks would need to demonstrate that they would increase their lending, increase their access to bank services, and reduce prices.[5] The merger statement allowed them to demonstrate this in several ways. They could negotiate Community Benefit Agreements (CBAs) with community organizations specifying increases in loans and bank services after mergers. Alternatively, they could submit a plan to do this that would consider the input of community stakeholders but would not be a formal CBA. The 2024 statement indicated that any commitments by banks would be considered in post-merger supervision and oversight by the agency.[6] For example, it would be possible that future CRA exams would consider whether the banks did in fact increase their lending to LMI borrowers and communities after their mergers.

Only when mergers are accompanied by increased agency enforcement or engagement by the public are the chances increased that mergers would confer public benefits on communities as required by law.[7] Research conducted by Federal Reserve economists demonstrated that CBAs with community groups resulted in banks increasing their lending to traditionally undeserved

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Appalachian Regional Commission, July 2013, 221-222, https://www.arc.gov/wp-content/uploads/2020/06/AccessToCapitalAndCreditInAppalachia-July2013.pdf

[3] Bruce C. Mitchell, Jason Richardson, Zo Amani, *Relationships Matter: Small Business and Branch Bank Locations*, March 2021, https://ncrc.org/relationships-matter-small-business-and-bank-branch-locations/

[4] Ariel Pakes, Michael D. Whinston, and Fanyin Zheng, *The Consumer Welfare Effects of Bank Mergers*, Toulouse School of Economics, October 2024, https://www.tse-fr.eu/sites/default/files/TSE/documents/sem2024/department/whinston.pdf "We find that consumer welfare fell significantly, economically and statistically, in single-merger counties compared to no-merger counties, with the difference equivalent to a 35% reduction in deposit interest rates."

[5] FDIC, *Final Statement of Policy on Bank Merger Transactions*, Federal Register, Vol. 89, No. 188, Friday, September 27, 2024, 79138

[6] Ibid.

[7] FDIC webpage section regarding the Federal Deposit Insurance Act, specifically Section 18(c)(5)(B) via https://www.fdic.gov/regulations/laws/rules/1000-2000.html

communities after mergers.[8] More recent research has reached similar conclusions.[9] These positive outcomes are never assured but they are more likely to be attained when agencies set clear standards and expectations for better service to communities as the 2024 FDIC policy statement did.

Proposed rescission suggests 2024 policy statement was subjective and vague, but the previous statement was less specific

Convenience and needs – 2024 statement more detailed and clearer than 2008 statement

The proposed recission indicates that it will replace the 2024 statement with a statement that is essentially the 2008 statement (this letter will refer to the statement that the FDIC proposes to revert to as the 2008 statement for the rest of comment). The 2008 statement regarding the statutory factor of convenience and needs is so brief that it allows banks to vaguely assert that it will meet the convenience and needs of communities without details about how they will do so.

The similarities in the 2024 statement and the 2008 statement are the first couple of sentences that describe how banks are to meet convenience and needs.

Here are the sentences from the 2008 statement:

> In assessing the convenience and needs of the community to be served, the FDIC will consider such elements as the extent to which the proposed merger transaction is likely to benefit the general public through higher lending limits, new or expanded services, reduced prices, increased convenience in utilizing the services and facilities of the resulting institution, or other means.[10]

Here are the sentences from the 2024 statement:

> The FDIC expects that a merger between IDIs (insured depository institutions) will enable the resulting IDI to better meet the convenience and the needs of the community to be served than would occur absent the merger in order to find favorably on this factor.

[8] Raphael W. Bostic and Breck L. Robinson, *What Makes CRA Agreements Work? A Study of Lender Responses to CRA Agreements,* 14. Paper prepared for the Federal Reserve System's third biennial research conference titled "Sustainable Community Development: What Works, What Doesn't and Why," February 2003. https://www.federalreserve.gov/communityaffairs/national/CA_Conf_SusCommDev/pdf/bosticraphael.pdf, Raphael W. Bostic and Breck L. Robinson, *"Do CRA Agreements Influence Lending Patterns?"* Real Estate Economics, released ahead of print, August 2002, 10-11.

[9] Colleen Casey, Joseph Farhat, Gregory Cartwright, *Community Reinvestment Act and Local Governance Contexts: Advancing the Future of Community Reinvestment?* Cityscape: A Journal of Policy Development and Research, Volume 19 Number 2 (Washington, D.C: U.S. Department of Housing and Urban Development, Office of Policy Development and Research 2017), 146, https://www.jstor.org/stable/26328333

[10] FDIC, *Statement of Policy on Bank Merger Transactions: Proposed Rescission*, Vol. 90, No. 46, Tuesday, March 11, 2025, 11682.

> Applicants are expected to demonstrate how the transaction will benefit the public through higher lending limits, greater access to existing products and services, introduction of new or expanded products or services, reduced prices and fees, increased convenience in utilizing the credit and banking services and facilities of the resulting IDI, or other means.[11]

Both the 2024 and 2008 statements indicate that meeting convenience and needs entails higher lending limits, which should be taken to mean increased loans after the merger. Both indicate that meeting convenience and needs involves "new or expanded services" in the 2008 statement and "greater access to existing products and services" in the 2024 statement. Both statements refer to the need for banks to demonstrate that prices are to be reduced.

The opening statements indicate that expectations for meeting convenience and needs are quite similar in the 2008 and 2024 statements. The FDIC's proposed rescission is therefore inconsistent when it states that the 2024 statement is vague and subjective in its expectations for convenience and needs.[12] This assertion would logically make the similar 2008 statement also subjective.

After the similarly broad convenience and needs statements, the 2024 policy statement is more specific than the 2008 statement. In contrast to the 2008 statement, the 2024 statement indicates that, "The FDIC expects applicants to provide specific and forward-looking information to enable the FDIC to evaluate the expected benefits of the merger on the convenience and needs of the community to be served."[13] The very next sentences in the 2024 statement indicate that any bank commitments and claims regarding convenience and needs could be included in a FDIC order.[14]

Thus, the FDIC is signaling to banks that they should be specific in indicating how their lending will be higher, services will be expanded, and prices would be reduced in a commitment. This is not a vague expectation. Instead, the 2024 statement suggests that the clearest path to FDIC approval of the merger under the convenience and needs criterion is a verifiable plan or commitment for more loans, services and lower prices. In contrast, the 2008 statement does not clearly describe this expectation. Thus, it is the 2008, not the 2024 statement that is vague and could result in cursory and unverifiable bank assertions that they will increase their abilities to serve convenience and needs.

After encouraging commitments regarding meeting convenience and needs, the 2024 statement describes additional review criteria that the 2008 statement lacks. The 2024 statement indicates

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[11] FDIC, Final Rule, 2024, 79138.
[12] FDIC*, Proposed Rescission*, 11679-11680
[13] FDIC, *Final Rule*, 2024, 79138.
[14] Ibid.

that the agency will review performance in CRA assessment areas, product offerings, the planned opening and closing of branches during the three years following the merger, job losses associated with branch closures, compliance with consumer protection laws and any violations of those laws.[15] The statement advises that bank applications projecting "material reductions in service" to LMI communities "will generally result in unfavorable findings."[16]

The 2024 statement contains a list of detailed and reasonable criteria that provides a clear checklist for banks of what actions they should take in the years preceding a merger and how to describe their performance on the applications. In contrast, the 2008 statement does not provide a checklist to banks of how to improve their abilities to meet convenience and needs so that their applications can be approved.

The 2024 statement offers more specifics about when banks can expect public hearings

The criteria for deciding when to hold public hearings to gather more information about convenience and needs has been vague and inconsistent across administrations and agency heads. The 2024 policy statement takes a first and important step in clarifying when hearings will be held. It states that the FDIC "generally expects to hold a hearing for any application resulting in an IDI with greater than $50 billion in assets or for which significant CRA protests are received."[17] This is sensible in that mergers involving large banks with assets of $50 billion are likely to pose the greatest risk of being anti-competitive and leaving communities with less loans or more costly loans and services.

Moreover, other mergers that may not involve large banks may nevertheless pose significant concerns for communities as reflected in several comments. It could be the case that one of the banks finances slumlords or companies engaged in hazardous workplace or environmental practices. A public hearing is necessary for these mergers so the FDIC can more fully review concerns and probable impacts on convenience and needs. In this regard, the 2024 statement appropriately responds to community concerns by stating that hearings are generally needed when the agency receives several comments.

The 2024 statement strikes an appropriate balance between specificity and flexibility and can be supplemented by examples of meeting convenience and needs in FDIC application materials

If the FDIC is still concerned about any vagaries in the 2024 merger statement regarding convenience and needs, it can edit application materials with even more specifics in how to demonstrate abilities to meet convenience and needs consistent with merger approvals. Such guidance can indicate that banks can commit to percentage increases in loans or services that are

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[15] Ibid.
[16] Ibid.
[17] Ibid.

higher than those in their recent past (commonly three-year averages of prior year activity are used in this type of forward planning). In addition, guidance could ask banks to review their CRA performance and identify assessment areas or component tests in which they scored Low Satisfactory or less. In response to low ratings, banks could indicate in their applications specific goals that would enable them to improve their ratings in these assessment areas or component tests.

In our multi-decade experience, NCRC has not encountered merger policy statements that have bright lines which are designed to alleviate subjectivity or inconsistencies. Banks seem contradictory regarding bright lines. Sometimes, banks and their trade associations advocate for bright lines but then object to them such as the opposition to the performance ranges and thresholds on the retail test in the 2023 CRA regulation (as an example of a bright line, in the retail lending test, banks could earn an Outstanding rating if their lending to moderate-income borrowers was 115% of the market benchmark).[18] Perhaps, merger statements have avoided bright lines to avoid bank opposition and because mergers are not exams and thus do not lend themselves to precise thresholds. Mergers are more idiosyncratic events with various impacts on large and smaller communities. Therefore, policy statements have allowed for some flexibility and tailoring of solutions to ensure meeting convenience and needs.

The 2024 policy statement has struck an appropriate balance between specificity and flexibility. It is considerably more specific than the 2008 statement. It also provides general guidance and a checklist about how merging banks should demonstrate they will improve their lending and service provision with specific details. Recission would be a step backwards whereas further explanations and examples in application materials about how to provide specifics regarding performance would be a better course of action in ensuring that banks can meet convenience and needs.

2008 and 2024 Statements are Similar Regarding Anti-Competitiveness Criteria so the FDIC Cannot Consider One to be Objective and the other to be Subjective

The 2008 and 2024 statements describe how an anti-competitive analysis would consider geographical and product markets. The descriptions in both statements are substantially similar regarding these markets.

The 2024 statement indicates that:

[18] If all lenders, as a group, in a geographical area made 20% of their loans to moderate-income borrowers and the bank undergoing a CRA exam made 23% of their loans to moderate-income borrowers, the bank would earn an Outstanding on lending to moderate-income borrowers because its performance was 115% of the all lender, market benchmark.

> The FDIC identifies all relevant geographic markets (local, regional, and national) based on the areas in which the merging entities operate and in which customers may practically turn to competitors for alternative products and services.[19]

The 2008 statement describes geographic markets as:

> The relevant geographic market(s) includes the areas in which the offices to be acquired are located and the areas from which those offices derive the predominant portion of their loans, deposits, or other business. The relevant geographic market also includes the areas where existing and potential customers impacted by the proposed merger transaction may practically turn for alternative sources of banking services.[20]

Whereas the 2008 statement is more focused on branches, described as offices, both statements make clear that the geographical market is where the banks operate. Both statements also indicate that additional areas are those where the customers may seek alternative banks.

The product market descriptions are also similar. Consider the following.

According to the 2008 statement the FDIC considers:

> The relevant product market(s) includes the banking services currently offered by the merging institutions and to be offered by the resulting institution.
>
> The FDIC's analysis will focus primarily on those services that constitute the largest part of the businesses of the merging institutions. In its analysis, the FDIC will use whatever analytical proxies are available that reasonably reflect the dynamics of the market, including deposit and loan totals, the number and volume of transactions, contributions to net income, or other measures.[21]

The 2024 statement indicates that:

> In addition, the FDIC will consider concentrations beyond those based on deposits. As appropriate, the FDIC may consider concentrations in any specific products or customer segments, such as, for example, the volume of small business or residential loan originations or activities requiring specialized expertise.[22]

Both statements indicate that the FDIC will not only review deposits but also other major products for the banks, possibly including home and small business loans. Despite these similarities, the proposed rescission labels the 2024 policy statement subjective because it omits

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[19] FDIC, *Final Rule,* 2024, 79136.
[20] FDIC, *Proposed Rescission*, 11681.
[21] Ibid.
[22] FDIC, *Final Rule*, 2024, 79136

a description of how the Herfindahl-Hirschman Index (HHI) would be employed in anti-trust analysis. While that is technically correct, the proposed recission does not mention that the 2024 statement refers to the Department of Justice (DOJ) anti-trust analysis and decisions regarding pending mergers.[23] In late 2023, the DOJ and the Federal Trade Commission (FTC) had updated their merger policy statement including an updated application of HHI analysis.[24] Thus, by referencing the DOJ, the 2024 policy statement incorporates HHI analysis.

Under the new DOJ and FTC guidelines adopted by the 2024 merger policy statement, if a highly concentrated market with an HHI of over 1,800 would experience an increase in the HHI of at least 100 points as a result of a merger, the DOJ and FTC will consider the result to substantially decrease competition and increase the chances of a monopoly. A merger could still be approved but it would need to pass additional anti-trust tests and would also need to demonstrate that public benefits would exceed the costs imposed by a less competitive market.[25]

The 100 points threshold is an adjustment to a threshold that was previously 200 points. The 100 points threshold makes intuitive sense because a pre-merger HHI of 1,800 points indicates that the geographic or product market only has approximately five competitors (each with a market share of about 20 percent) and that the two banks merging each had a market share of about 7 percent (the HHI increase would be 196 points since the resulting bank would have a market share of 14 percent whereas the pre-merger HHI of both banks having a 7 percent market share would be 98 points).[26] Overall, the market with a small number of large banks now has even fewer competitors and the merging banks doubled their market share. It would seem like this was a necessary adjustment to be more vigilant against anti-competitive situations. Thus, the 2024 final statement better protects the public against anti-competitive behavior than the 2008 statement.

Again, it is inconsistent to label the 2024 policy statement subjective regarding anti-trust analysis while not also finding that the 2008 statement is subjective. Moreover, the 2024 anti-competitive analysis became more rigorous. Any incompleteness in the 2024 policy statement could have been addressed by updating merger application procedures by referring applicants to the updated

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23 Ibid.

24 Josh Silver, *Analysis: How Community Groups Can Use The New FTC-DOJ Merger Guidelines To Advance The Just Economy*, NCRC, January 18, 2024, https://ncrc.org/ncrc-summary-of-the-department-of-justice-and-federal-trade-commission-merger-guidelines/

25 The 2024 statement in its preamble implies that for smaller markets, traditional HHI analysis would be supplemented by consideration of competition for other non-bank lenders, 79126. Also, see FDIC webpage section regarding the Federal Deposit Insurance Act, specifically Section 18(c)(5)(B) via https://www.fdic.gov/regulations/laws/rules/1000-2000.html

26 The HHI is the squares of the market shares of the banks in the geographical area. Thus, when banks merge and have a new market share of 14 percent, 196 is the product of 14x14.

DOJ and FTC anti-trust guidelines. There is no need to discard the 2024 statement that made important advances in merger application reviews.

Conclusion

Over the last several decades, the FDIC, like the other bank agencies, have approved the vast majority of applications that involve mergers. This record would likely continue under the 2024 merger statement. Instead of leading to increased merger denials or lengthy delays in merger application decisions, the 2024 merger guidelines established clearer and more rigorous guidelines and checklists for bank compliance with the convenience and needs and anti-trust factors. Therefore, banks would be better able to prepare for their mergers and thus increase their chances for approval. In addition, mergers would be more likely to meet convenience and needs through increased lending and access to bank services. Also, mergers would be less likely to pose anti-trust concerns or at least the anti-competitive impacts were more likely to be mitigated by improvements in the banks' abilities to meet convenience and needs.

The 2024 merger policy statement represented a win-win for banks and communities – the likelihood of merger approvals with banks better able to meet convenience and needs in more competitive markets. Rescission is counterproductive, unnecessary, and impairs the agencies' mission and legal requirements to ensure that mergers confer public benefits.

Thank you for the opportunity to comment on this important matter. If you have any questions, please email me on [redacted] or contact Josh Silver, Senior Fellow, at [redacted].

Sincerely,

[redacted]

Jesse Van Tol
President and CEO