BANK POLICY INSTITUTE

Statement for the Record from the Bank Policy Institute

Before the House Financial Services Committee

Subcommittee on Financial Institutions and Monetary Policy

"Merger Policies of the Federal Banking Agencies"

May 1, 2024

The Bank Policy Institute welcomes the opportunity to provide input to the Committee on its hearing on "Merger Policies of the Federal Banking Agencies." A well-designed merger policy is crucial for fostering a diverse and dynamic banking system.

Mergers play a vital role in promoting competition within the banking industry by enabling banks to reduce costs through economies of scale—this is particularly important in this era of rapid technological development where banks must invest in innovative solutions to remain competitive and meet customers' needs. Clear expectations and timelines for merger approvals enable banks to make informed decisions about growth through M&A. The current process is already fraught with delays and uncertainty, despite clear statutory standards.

Recently, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation have proposed policy statements to clarify the review of applications under the BMA that, if adopted, would significantly alter their historical approach for assessing bank merger applications. These proposed changes would, in the most favorable case, discourage merger transactions involving large banks, and in the worst case, prevent them altogether.

We are concerned that these recent actions by the OCC and FDIC would in effect preclude many beneficial bank merger and asset acquisition transactions, and, even for those that would not be precluded, the proposals would heighten rather than reduce uncertainty relating to the overall review process and the likelihood of approval. Given the serious concerns about employee and customer retention arising from a prolonged approval process and the direct and indirect costs of rejection of an application, the proposals if adopted would likely have a substantial chilling effect on these types of strategic transactions at a time when economics demand them. This risk would be amplified by, for example, the FDIC's proposed approach to make public commentary on at least some withdrawn bank merger applications, potentially exposing applicants to unnecessary reputational damage. The result would be a less safe and sound U.S. banking system that is less able to serve the nation's businesses and consumers.

The view that a merger crossing a particular asset indicator—such as $50 billion in the case of the OCC proposal—is presumptively a risk to the stability of the U.S. banking or financial system would depart

significantly from prior practice and law. There is no such size-based requirement or presumption set forth in the Bank Merger Act and, in fact, it is directly contrary to Congress's statutory framework for bank mergers. One of the principal size limits imposed by Congress on mergers—10 percent of national deposits or liabilities—is approximately 40 times the size of a $50 billion-asset bank.

Consistent with the recent views expressed by senior officials in the federal banking regulators in response to the OCC and FDIC proposals, we do not believe that regulators should engage in "regulation by application," which is what would occur as a practical matter if the policy statements were adopted in the forms proposed. For example, the FDIC proposal includes a new subjective and extra-statutory requirement that parties to the transaction demonstrate that the merger will "better serve" the relevant community on a going forward basis post-closing. We are also concerned that the proposals "reflect [] and would implement a bias against bank mergers that is bad policy and contrary to law," as FDIC Director McKernan has observed. Furthermore, we agree with FDIC Vice Chairman Hill that the ultimate goal for the federal banking regulators should be to work with one another to "develop a regulatory framework that allows banks of all sizes and various business models to flourish, is not biased in favor of one class of bank over others, and otherwise leaves it up to the market and the American people to determine how banking assets are allocated across the system."

We encourage the Subcommittee to consider the economic benefits of bank M&A and the costs of precluding it. A predictable path forward for bank mergers promotes a healthier banking system and a more stable U.S. economy.

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